Civil Courts, to obtain a large amount of documentary and other evidence from banks, brokers and others, unknown to your orators until then, demonstrating the division of the fruits of the said fraudulent scheme between the said conspirators as set forth in this bill.

The said Robert F. Westcott too had returned to the United States, and the case against his son-in-law Carter having been ended by his imprisonment under sentence in the penitentiary, expressed his willingness to testify as against the other conspirators to the facts within his knowledge and turn over to the Government all his checks, check books, and documents bearing upon questions in issue. This the said Westcott did, and it was found by the Government's expert accountant, as testified to at said hearing, that while a considerable part of the proceeds of said divisions of the profits of said contracts had passed through said Westcott's hands, and while a large part had been handled through the banks in Westcott's name under powers of attorney held by said Carter, that said Westcott had retained no part of the same, but that the same or the investment of the same almost immediately after division found its way into the possession of said Oberlin M. Carter, who proceeded to enjoy the income therefrom.

Notice to American Mortgage Company.

(5) The testimony of said Robert F. Westcott on said hearing before the said Commissioner, which was concluded October the 5th, 1900, was a notable event, and on account of the great interest which had been excited over the case throughout the country, and the testimony of the said Westcott denying that he had ever had any interest in these contracts, or ever had any pecuniary interest in the securities and investments aforesaid, and particularly in the said 8th avenue property and Orange, New Jersey, property, was given wide publicity through the newspapers and otherwise.

So that the said American Mortgage Company, party defendant hereto, whose principal officers are attorneys practicing law in the City of New York, had, as your orators are informed, believe and so charge, by the notorious character of the case, and by reason of the fact that said mortgage was executed by said Oberlin M. Carter while in prison, and otherwise full, actual and constructive notice, at and before October the 8th, 1900, the date they took said mortgage, that

said Oberlin M. Carter held the title to said 8th avenue property in fraud and under the implied trust to account to your orators for the same, as aforesaid.

Nevertheless, the said American Mortgage Company with full notice of your orators rights as aforesaid, on October the 8th, 1900, while said hearing was in progress and accounts of the same were being published from day to day in the newspapers, accepted from said Oberlin M. Carter a mortgage on said 8th avenue property for the alleged consideration of $23,000 then and there alleged to have been loaned, which mortgage on its face put the said company on notice that it was executed by the said Oberlin M. Carter, while in the penitentiary at Fort Leavenworth, Kansas, as aforesaid. By reason whereof your orators aver that said American Mortgage Company acquired no right in and through said mortgage as against the right and equity of your orators in said 8th avenue property as aforesaid.

IX.

Lorenzo D. Carter and I. Stanton Carter join the conspiracy.

(6) Your orators further aver that the said Lorenzo D. Carter, party defendant hereto, is an uncle of the said Oberlin M. Carter, and that Lorenzo D. Carter from the time of Oberlin M. Carter's conviction by said Court Martial up to this time has taken a strong and active part in endeavors to gain the said Oberlin M. Carter's freedom, and he as well as the said I. Stanton Carter have been from said time of Carter's conviction fully cognizant of the fact that the said Oberlin M. Carter had no interest in any of the aforesaid securities or investments, except such as he had acquired in pursuance of said scheme to defraud your orators as aforesaid. Nevertheless the said Lorenzo D. Carter and the said I. Stanton Carter did on or about the time of the confirmation of said Court Martial proceeding aforesaid, join said conspiracy to defraud the United States as aforesaid and agree with said Oberlin M. Carter to aid and abet him in holding and concealing from your orators the assets into which the said Oberlin M. Carter had so diverted the funds intrusted to him as disbursing officer as aforesaid.

Power of Attorney to I. Stanton Carter.

(7) In pursuance of said agreement the said I. Stanton Carter on or about the 2d day of October, 1899, accepted from said Oberlin M. Carter as your orators are informed, believe and so charge, a power of attorney from the said Oberlin M. Carter, authorizing the said I. Stanton Carter to convey or dispose of any of the aforesaid assets by and in the name and stead of the said Oberlin M. Carter, and especially designed to convey the said 8th Avenue property in the City of New York, and the said Orange, New Jersey property, which Power of Attorney is recorded in the office of the Register of Deeds in and for the County of New York, in Liber 9, of Powers of Attorneys, page 314, on January 9th, 1901. And your orators charge that said Power of Attorney is a cloud upon the title and menace to the interest of your orators in said property and in equity and good conscience should be cancelled.

8th Avenue property conveyed to Lorenzo D. Carter.

(8) That in pursuance of said agreement the said Oberlin M. Carter, by I. Stanton Carter, under said Power of Attorney, did on November 15th, 1900, by deed convey to the said Lorenzo D. Carter, and the latter did accept for the alleged consideration of $10,000, the equity of redemption in said 8th Avenue property, which deed is recorded in the records of the Register's office of said City and County of New York, in Liber 74, Folio 158 Section 3, and that Lorenzo D. Carter holds the same with full notice of your orator's rights therein and under the implied trust to account to your orator for the same on demand.

Orange, N. J., Property Conveyed to Lorenzo D. Carter.

(9) Your orators further aver and charge that on the 23d day of October, 1900, the said Oberlin M. Carter by the said I. Stanton Carter under the aforesaid power of attorney by deed conveyed to Frank P. Blair of Chicago, Illinois, the aforesaid Orange, New Jersey property, which had been previously conveyed to said Oberlin M. Carter by deed of June 9th, 1899, as hereinbefore mentioned for the alleged consideration of one dollar, which deed is recorded in the office of the Register of Deeds of Essex County, New Jersey, in Liber

"U. 33," p. 213. That said Frank P. Blair was one of the attorneys for said Oberlin M. Carter in the said Court Martial proceedings, and took the title to said property with full notice of the fraud by which the said Oberlin M. Carter had acquired the same, and took the same for the purpose of holding the same for the said Oberlin M. Carter. That notwithstanding said conveyance to said Frank P. Blair as aforesaid the said Oberlin M. Carter by the said I. Stanton Carter under the aforesaid power of attorney by deed dated January 25th, 1901, and recorded in the office of the Register of Deeds for said County of Essex, New Jersey, in book "B. 34, p. 53," conveyed to said Lorenzo D. Carter of Oakland, Illinois, the same aforesaid Orange, New Jersey property which had been so conveyed to said Frank P. Blair aforesaid for the alleged consideration of $100.00. That the said Lorenzo D. Carter took the said conveyance to hold the said property for the benefit of said Oberlin M. Carter in pursuance of the aforesaid agreement he had made with said Oberlin M. Carter and with full knowledge of the fraud by which the Oberlin M. Carter had acquired the same as aforesaid.

That thereafter on May 13th, 1901, by quitclaim deed for the alleged consideration of one dollar, the said Frank P. Blair and Florida Blair, his wife, conveyed to the said I. Stanton Carter of Chicago, Illinois, the same Orange, New Jersey property, which had been so conveyed to the said Frank P. Blair on October 23, 1900, as aforesaid, and the said I. Stanton Carter took the said conveyance to hold the said property for the benefit of said Oberlin M. Carter, and with full knowledge of the fraud by which the said Oberlin M. Carter had acquired the same as aforesaid.

Your orators further aver and charge that by reason of the premises the said Lorenzo D. Carter and the said I. Stanton Carter hold the title to the said Orange, New Jersey property so conveyed to them under the implied trust to account to your orators for the same, and to turn over, deliver and convey the same to your orators upon demand.

X.

Your orators further aver and charge that the said I. Stanton Carter and the said Lorenzo D. Carter have been and are collecting the rents, issues and profits of the said property on 8th avenue in New York City, and of the said Orange, New Jersey property aforesaid, and removing and secreting

the same. That in case of the destruction of the improvements on said property by fire your orators' interest in said property would be entirely swept away and lost, and that it is necessary for the protection of the interests of your orators that a receiver be forthwith appointed by this court to take charge of, hold and protect until the further order of the Court, all of the aforesaid properties within the jurisdiction of this Court, and to take charge of and hold such other of the properties or proceeds thereof, in the jurisdiction of this Court, into which the funds so intrusted to said Oberlin M. Carter as a disbursing officer have been so fraudulently diverted and invested, as aforesaid, and that in due course the appointment of such receiver should be made permanent.

XI.

Forasmuch as your orators can have no adequate relief, except in this Court, and to the end, therefore, that the defendants may, if they can show why your orators should not have the relief hereby prayed for, and full, true, direct and perfect answers make to the matters hereinbefore stated and charged, but not under oath, answers under oath being hereby expressly waived, your orators pray as follows:

(1) That this Court will forthwith appoint a temporary receiver to take charge of the aforesaid property within the jurisdiction of this Court as hereinbefore set forth until a hearing can be had on rule nisi to be issued in this cause.

(2) That in due course such receiver shall be appointed pendente lite.

(3) That the Court will in due course by its final decree declare all of the aforesaid investments within the jurisdiction of the Court, into which the funds so intrusted to said Oberlin M. Carter as disbursing officer and so fraudulently diverted to his own use as aforesaid, in the hands of the defendants and of all persons holding the same for the benefit of said Oberlin M. Carter, or taking the same with notice of the fraud, are properties held in trust for orators and will decree a delivery of the same or proceeds thereof to your orators or a conveyance of the same to your orators, on a sale of the same and the delivery of the proceeds to your orators as the nature of the case and justice may require.

(4) That the Court will decree a cancellation of said power of attorney given by said Oberlin M. Carter to said I.

Stanton Carter, and cancellation of the mortgage to the American Mortgage Co.

(5) That the Court will grant a restraining order and injunction in due course restraining any and all parties to this suit their agents and attorneys from in any manner conveying away, disposing of or incumbering pendente lite any of the properties described on Exhibit E to this bill, or the re-investments thereof.

(6) That the Court will decree that the amount due from said Mutual Life Insurance Company, of New York, on said insurance policy given as security to the aforesaid Beirne Gordon notes as well as the balance due from said Beirne Gordon on said notes shall be paid over to your orators as a part of said trust fund to which orators are justly entitled as aforesaid.

(7) That whenever other and additional persons within the jurisdiction of this Court shall become known holding with notice of the fraud any of said properties into which said fund so intrusted to said Oberlin M. Carter as disbursing officer has so fraudulently been diverted, and the details of the concealment of said properties shall have been sufficiently developed, that your orators may be allowed to make them parties hereto by suitable amendment with apt allegations and prayers.

(8) May it please your Honors to grant unto your orators the Court's most gracious writ of subpoena, directed to the said Oberlin M. Carter, at present residing in the Penitentiary at Fort Leavenworth, in the State of Kansas, to the said American Mortgage Company, a corporation having its principal place of business at No. 31 Nassau street, in the City of New York, to the said Lorenzo D. Carter, residing at Oakland, Coles County, Illinois, to the said I Stanton Carter, residing at Chicago, Illinois, to the said Beirne Gordon, residing at Savannah, Georgia, and to the said Mutual Life Insurance of New York, a corporation having its principal place of business at No. 32 Nassau street, in the City of New York.

(9) Inasmuch as the defendants Oberlin M. Carter, Lorenzo D. Carter, I. Stanton Carter and Beirne Gordon are not to be found in the territorial jurisdiction of this Court. Your orators pray that the Court will make a suitable order for service upon them by publication in accordance with the statute in such case made and provided.

(10) May it please your Honors to grant unto your orators

such other and further relief as the nature of their case may require and to the Court may seem meet and appropriate.

(11) Your orators on the 30th day of July, 1901, filed in the Circuit Court of the United States for the Southern District of New York a bill of complaint of similar tenor and effect to this bill against the said Oberlin M. Carter, Lorenzo D. Carter, I. Stanton Carter and others seeking to subject to like equities the properties in that jurisdiction constituting the investments made by said Oberlin M. Carter of the funds intrusted to him as a disbursing officer, which bill is now pending and a temporary receiver has been appointed by that Court to take charge and preserve said properties until the further order of the court. Your orators pray that this bill may be taken as auxiliary to said bill so pending in New York as aforesaid.

MARION ERWIN
Special Assistant to Attorney General
Solicitor for Complainants

G. W. ATKINSON
U S Attorney
Of Counsel.

United States of America,
Southern District of West Virginia, } ss.:

On this 30 day of Aug, 1901, before the undersigned personally comes Edward I. Johnson, who being duly sworn, deposes and says that he is a bank examiner by profession; that he has for two years and over been engaged under employment by the United States in working out through the accounts and documents in the Engineer's office for the Savannah District, and the accounts of Oberlin M. Carter, Benjamin D. Greene, John F. Gaynor, R. F. Westcott and others, in the banks and brokers' offices in New York and elsewhere, the details of the frauds set forth in the foregoing bill; that he has read the testimony of the witnesses in the court Martial proceedings therein referred to, and in the proceedings for removal of Benjamin D. Greene et al., therein referred to, and he has read the said bill and is familiar with the facts set forth in said bill, and that the facts therein stated are true to the best of his knowledge, information and belief.

EDWARD I. JOHNSON

Subscribed and sworn to before me this 30 day of Aug, 1901.

J. W. PERRY
Notary in and for Cabell County West Virginia

Endorsement

Bill. Filed in Clerk's office at Huntington of U S Circuit Court for Southern District of West Virginia, J. W. Perry Deputy Clerk

Memorandum

Exhibits A. B. C. D. & E. to this Bill are omitted, because they are identical with the Exhibits to the Bill in the Northern District of Illinois similarly lettered.

IN THE CIRCUIT COURT OF THE UNITED STATES

For the Southern District of West Virginia.

The United States of America,
vs.
Oberlin M. Carter, *et al.*
} In Equity, Bill &c.

The complainants having commenced in this Court a suit as above entitled to enforce a legal and equitably lien upon and claim to, and to remove incumbrances, liens, and clouds upon the title to personal property within the District, more particularly described in said Bill, and the defendants, Oberlin M. Carter, Lorenzo D. Carter and I. Stanton Carter, not being inhabitants of or found within the said District, and not voluntarily appearing thereto; It is Ordered by the Court that the said above named defendants shall appear, plead, answer or demur to said bill on or before the 30th day of October, 1901, at which time, or as soon thereafter as the case can be heard, the question of the appointment of a Receiver and issue of injunction pendente lite will be heard.

Let a copy of this order be served upon the said defendants if practicable wherever found, and upon the person or persons in possession or charge of said property.

Let a copy of this order be published once a week for six consecutive weeks prior to the date fixed herein for the appearance of said defendants in the Huntington Herald, a newspaper of Huntington, West Virginia.

August 31, 1901.

BENJ. F. KELLER,
U. S. Judge.

Copy
Teste: EDWIN M. KEATLEY,
Clerk, C. C. U. S. S. D. W. Va.
By J. W. PERRY,
Deputy.

9-4-6w.

U. S. Marshal's Return:

Received this writ at Topeka, Kansas, September 21, 1901, and executed the same at Fort Leavenworth, Leavenworth County, Kansas, September 23, 1901, by delivering to the within named Oberlin M. Carter, personally, a certified copy of this writ with all the endorsements thereon.

W. E. STERNE,
U. S. Marshal.
By E. A. PRESCOTT,
Deputy.

Marshal's Fees:

Service 1 person	$2.00
Travel 64 mi. 6¢	3.84
	$5.84

IN THE CIRCUIT COURT OF THE UNITED STATES

For the Southern District of West Virginia.

The United States of America
vs.
Oberlin M. Carter, *et al.*

September term, 1901
In Equity Bill etc.
Order relation to fund in hands of Receiver etc.

It appearing to the Court, from the report of G. A. Northcott, receiver in the above stated cause that, assets have come into his hands as such receiver, as follows:

Cash	$121,282.08
Certificates of Deposit in the Kanawha Valley Bank	20,000.00
10 M Chicago, St. Paul, Minneapolis and Omaha Bonds, par value	10,000.00
5 M. Chesapeake & Ohio Ry. Bonds par value	5,000.00
300 Shares, Baltimore & Ohio Ry. preferred stock, par value $100.00 each	30,000.00
100 shares, Hocking Valley R. R. preferred stock, par value $100.00 each	10,000.00

It is therefore ordered:—

That the said Receiver shall forthwith deposit said sum of $121,282.08, held in cash by him, in the Sub-Treasury of United States at Cincinnati Ohio, the designated depository for the Court. Said deposit shall be made "To the credit of the Circuit Court of the United States for the Southern District of West Virginia in the Equity cause of United States of America vs. Oberlin M. Carter et al. subject to the check of E. M. Keatly, Clerk and Register, on the order of the Judge of said Court." It is further ordered that said Receiver, give a new bond, in the sum of $75,000.00, payable to the United States of America for the benefit of whom it may concern, conditioned for a faithful performance of his duties as Receiver in said cause.

In open Court, Sept. 17, 1901.

BENJ. F. KELLER,
U. S. Judge.

Endorsement on copy of proceeding in Circuit Court of United States for Southern District of West Virgina. Filed in Clerk's Office United States Circuit Court for the Northern District of Illinois Sep. 18, 1906. Marshall E. Sampsell Clerk.

And on towit: the 18th day of September 1906 came the complainant by its Solicitor Marion Erwin and by agreement of parties filed in the Clerk's office of said Court copies of the Auxiliary Bill, Amendment thereto, previously filed in the Circuit Court of the United States for the Southern District of Georgia, together with copies of certain proceedings had thereon in said Circuit Court for the Southern District of Georgia, in the words and figures following towit:

Bill filed in Southern District of Georgia Aug. 5, 1901.

IN THE CIRCUIT COURT OF THE UNITED STATES.

For the Southern District of Georgia

Eastern Division

The United States of America
vs.
Oberlin M. Carter, *et al.*
} In Equity
Bill, &c.

To the Honorable the Judges of the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

The United States of America brings this its bill of complaint against Oberlin M. Carter, a citizen of the State of Ohio at present residing in the United States Penitentiary at Fort Leavenworth in the State of Kansas, and against Lorenzo D. Carter, a citizen of the State of Illinois residing at Oakland, Coles County, Illinois, and I. Stanton Carter, a citizen of the State of Illinois, residing at Chicago, Illinois, and against Beirne Gordon, a citizen of the State of Georgia, residing at Savannah in Chatham County, Georgia, and against the Propellor Towboat Company a corporation organized under the laws of the State of Georgia and against the Savannah Lighterage and Trust Company, a corporation organized under the laws of the State of Georgia and against the Brush Electric Light and Power Company, a corporation organized under the laws of the State of Georgia and against the Savannah Brewing Company, a corporation organized under the laws of the State of Georgia, and each of said corporations having their respective places of business, in the City of Savannah in said Division and District and against Michael A. Connolly, a citizen of the State of Georgia, residing in said Division and District.

And against William W. Mackall and J. Randolph Anderson, citizens of the State of Georgia, residents at Savannah in said Division and District.

I.

Carter's Duties, Powers and Discretions.

And thereupon your orators charge, aver, complain and say that from about the year 1888 until the 20th day of July,

1897, continuously, the said Oberlin M. Carter was an officer of the United States Army in the Corps of Engineers, and as such engineer in local charge in the Southern Judicial District of Georgia, of what is usually called the "Savannah District" for the improvement by the United States of rivers and harbors, and as such officer he was engaged in and about the execution of such river and harbor improvements as were made in said Savannah District during said period; and as such officer in charge of said Savannah District he was vested with sundry powers, duties and discretions during said period and amongst others:

With power, duty and discretion in proposing from time to time to his superiors for adoption, projects for the improvement of the Rivers and Harbors in said Savannah District.

With power, duty and discretion in proposing from time to time to his Superiors for adoption, projects for the expenditures of moneys appropriated by Congress for the improvement of the Rivers and Harbors in said Savannah District.

With power, duty and discretion in devising, drafting and proposing from time to time to his Superiors for adoption, specifications for contracts for such River and Harbor improvements proposed to be made in said Savannah District.

With power, duty and discretion in from time to time drafting and proposing to his superiors for adoption, forms of advertisements for giving notice to the public that competitive bids would be received by him for the construction of such proposed River and Harbor works.

With power, duty and discretion in causing to be fixed and fixing the time such advertisements would be published prior to the opening of bids.

With power, duty and discretion in proposing from time to time to his superiors for adoption, and causing to be fixed, and fixing for such contracts to be let, the time designated in the specifications within which the successful bidder would be required to commence work.

With power, duty and discretion in giving out information in regard to such contracts to be let.

With power, duty and discretion in from time to time receiving proposals for and recommending to his superiors the awarding of such contracts.

With power, duty and discretion in approving or rejecting the bonds required to be given by such contractors.

With power, duty and discretion in superintending the

work being done by contractors under such contracts in said Savannah District; and in approving and accepting or rejecting material being put in and work done by such contractors in said Savannah District, according as the same was in accordance with the requirements of such contracts or not.

With power, duty and discretion in from time to time approving modifications of such contracts and suggesting to his superiors the adoption of such modifications.

With power, duty and discretion in from time to time approving or rejecting the accounts rendered to him by such contractors for material furnished and work done or claimed by such contractors to have been furnished or done by them under contracts let, according as such accounts should be fair and honest or false and fraudulent.

And with power, duty and discretion when in funds intrusted to him as a disbursing officer, in from time to time paying such contractors or refusing to pay them, the amounts claimed by them to be due them for material furnished and work done under such contracts let, according as such claims were fair and honest or false and fraudulent.

II.

The Scheme devised to Defraud.

That on or about the year 1891, the said Oberlin M. Carter and one Benjamin D. Greene, one John F. Gaynor, one William T. Gaynor, one Edward H. Gaynor and one Michael A. Connolly (hereinafter for the sake of brevity called the conspirators), devised, concocted and put in operation a certain fraudulent scheme for the purpose of defrauding your orators, the United States of America.

(1) That the said fraudulent scheme contemplated that the said Oberlin M. Carter as such engineer officer in charge of said Savannah district should fraudulently exercise the said powers of his office and discretion vested in him as aforesaid in favor of said conspirators and against the interest of the United States, and contrary to his the duty and allegiance due by him to the Government under which he held such high and important trust.

(2) That said fraudulent scheme contemplated that by undue shortness of time in advertising the letting of contracts; that by withholding specifications from proposed bidders not in the conspiracy, as far as such withholding could

be made consistent with the concealment of the fraud; that by drafting the specifications, so as to mislead proposed bidders not in the conspiracy as to the character and quantity of material really intended to be used in the work under the contracts, and by fraudulently and secretly furnishing to his co-conspirators information as to the bids, and as to his future course as engineer officer in charge in the construction of the work under the contracts, the said Oberlin M. Carter would effectually suppress competition in the bidding for such contracts to be let for the United States through said Oberlin M. Carter, for said Savannah District, and that the said conspirators in the name of some one of them, or of some other person or corporation for their benefit, would be the only real bidders for such contract work for construction of jetties, spur-dams and training walls, for the improvement of the rivers and harbors in said Savannah District. That thus all such contracts which would be from time to time let for such work as aforesaid, would be obtained by some one or other of said conspirators or by and in the name of some other person or corporation but secretly for the benefit of said conspirators; to the end that the said river and harbor work in said Savannah District put out to be done on contracts, would be fraudulently let for the benefit of said conspirators at high and exorbitant cost to the United States of America, and at great profit to the said conspirators.

(3) That said fraudulent scheme further contemplated, that said Oberlin M. Carter, as such engineer officer in charge as aforesaid should in drafting the specifications for contracts to be let by competitive bids for what is commonly called mattress work to be used in the construction of jetties, spur-dams and training-walls in the river and harbor improvements in said Savannah District, would introduce into the specifications the novel provision of having two or more designs of mattresses specified, to be bid for by the proposed contractor at one price for either design; the one design to be very much more costly for the contractor to furnish than the other or others, but the engineer in charge to have the option after the contract should be let to call for either design he might choose to have put in the work; with intent that the bid of any person not a party to said fraudulent scheme who should propose to bid on such contract would have to be based upon the most costly design of mattress so specified, as the one most apt to be called for by the en-

gineer, while the said conspirators or the person acting for them, would be informed by the said Oberlin M. Carter before the bidding that only the cheapest design of those specified in the specifications would be called for to be put in the works, and would thus, even if the other means to suppress competition provided for in the fraudulent scheme should fail, be able to bid a very high price for the contract, based on the cheapest design of mattress, and still underbid all other bidders and obtain the contract.

(4) That said fraudulent scheme further contemplated that said Oberlin M. Carter as such engineer, officer in charge as aforesaid, should in drafting the specifications for contracts to be let for jetties, spur-dams and training walls in said Savannah District would specify so vaguely, and so uncertainly set forth the character quality, quantity, description and design of the material to be used in the work, (a) that when the material was furnished by the contractor under such contracts as should be so fraudulently obtained for the benefit of said conspirators as aforesaid, the said specifications could and would by a fraudulent, strained and lax construction to be placed upon the same, by said engineer in charge, be made to apparently justify the acceptance and approval which he would make for payment at such high and exorbitant prices, of large quantities of material of very poor and cheap quality, description and design, and of very small value to the United States, and (b) that when if by chance any person not a party to said fraudulent scheme should happen to be the lowest bidder and obtain any such contract in said Savannah District that by a fraudulent, unfair, rigid and stringent construction to be placed upon the specifications by said engineer in charge, the specifications could and would be made to apparently justify the rejection which he would make of material furnished by such contractor of very much better quality, quantity, description and design and of a greater value to the United States, with the intent that by such oppressive rejections, the performance of such contract would be made ruinous to the contractor so having dared to compete with said conspirators in bidding for such contract, and thus that further competition with the said conspirators would thereafter be effectually cut off.

(5) That said fraudulent scheme further contemplated that on all work so let on contracts which should be obtained for the benefit of said conspirators as aforesaid, the said

Oberlin M. Carter, as Engineer in charge as aforesaid, would so instruct and locate the assistant Engineers and Inspectors under him, intended for inspecting the details of the work of construction that there would be little if any inspection of the details necessary to be inspected to ensure the furnishing of honest work and material, and that the said Oberlin M. Carter as such engineer officer in charge would fraudulently accept for the government under such contracts, work done and material furnished known by him to be of inferior quality and quantity and not in accordance with the specifications, to the end that the United States might be defrauded with enhanced profits to the said conspirators.

(6) That said fraudulent scheme further contemplated that the said Oberlin M. Carter as such engineer officer in charge as aforesaid, would fraudulently approve for payment, and when in funds as a disbursing officer, fraudulently pay, accounts which would be rendered to him as such engineer officer in charge as aforesaid, by the said conspirators or by some one of them, or by or in the name of the person or corporation which should by the successful operation of said fraudulent scheme have obtained such contracts for the secret benefit of said conspirators, and which accounts should be rendered as aforesaid, for such inferior material and work to be put into said works as aforesaid, and at the exorbitant and fraudulent prices stated in such contracts so fraudulently to be obtained by said conspirators as aforesaid.

(7) That said fraudulent scheme further contemplated that the said moneys so fraudulently obtained on such contracts by the said conspirators through the said Oberlin M. Carter, as such Engineer officer in charge, and disbursing officer as aforesaid, should be appropriated to the use of the said conspirators and that they should aid each other in the concealment from the officers of the United States not parties to the conspiracy, of the moneys from time to time so misappropriated and of the investments thereof; to the end that said scheme might be further operated by them and that they might be secure from detection in the enjoyment of such moneys.

(8) That said fraudulent scheme further contemplated that out of the moneys so to be fraudulently appropriated by said conspirators as aforesaid, certain portions the full and exact amount of which is to your orators unknown, should be appropriated by the said William T. Gaynor and

Edward H. Gaynor, and smaller sums by the said Michael A. Connolly, and that the net profits of such contracts after payment of said sums and the cost of the work would be divided between the principal conspirators, Benjamin D. Greene, John F. Gaynor and Oberlin M. Carter.

III.

The scheme to defraud put in operation.

That pursuant to the scheme to defraud the United States so devised, concocted and agreed upon between the said conspirators, the said Oberlin M. Carter as such engineer officer in charge of said Savannah District, did on or about the first day of January, 1891, commence to put said fraudulent scheme in operation in said Savannah District, and to exercise the said powers and discretions of his office in favor of the said conspirators and against the United States in accordance with said fraudulent scheme, and continued so to do as successive contracts were to be let and were let from time to time by said Oberlin M. Carter as such engineer officer in charge as aforesaid, until on or about July 20th, 1897, when the said Oberlin M. Carter as such engineer officer in charge as aforesaid was relieved from duty and superceded. And each of the conspirators aforesaid, commenced on or about the first day of January, 1891, to do and perform their parts in the accomplishment and carrying out of said fraudulent scheme to defraud the United States and continued so to do as successive contracts were to be let and were let in said Savannah District from time to time, in the suppression of competition in the letting of the contracts, in the obtaining of the contracts in the name of some one of the conspirators or of some other person or corporation, for the benefit of said conspirators at high, exorbitant and fraudulent prices, in putting into the construction under the contracts poor, cheap and inferior material and work not in accordance with the specifications of the contracts, in the rendering of accounts against the United States for such poor, cheap and inferior material and work not in accordance with the specifications as aforesaid and at said high, exhorbitant and fraudulent prices fixed in said contracts so fraudulently obtained for the benefit of said conspirators as aforesaid, and in the approval and payment of such accounts by the

said Oberlin M. Carter as engineer officer in charge, and in the division of the said moneys so paid between the said conspirators and the concealment thereof, not only until the said Oberlin M. Carter was relieved from duty as such engineer officer in charge of said Savannah District on or about July 20, 1897, as aforesaid, but thereafter continued and have continued until this date to aid and abet each other in the concealment of the moneys so fraudulently obtained from the United States, through the operation of said scheme and in their endeavor to obtain additional moneys from the United States for work alleged to have been done under such contracts so fraudulently obtained at the exorbitant and fraudulent prices secured in said contracts by the operation of said fraudulent scheme, and for the poor, cheap and inferior material put into said constructions, not in accordance with the specifications.

IV.

Description of the Engineering Work.

That the principal expenditures made by the United States in river and harbor improvements in said Savannah District both under General Q. A. Gilmore, the predecessor of the said Oberlin M. Carter in charge of said district and under the administration of the latter were in the construction of spur-dams and training walls, commonly included under the generic term of "jetties" and being a kind of dam or wall constructed of "logs and brush and stone" or of "brush and stone," so placed as to narrow the channel or so placed in reference to the channel as to effect the flow of the current, and as a result of the increased flow of water to cause an increase in the depth of the channel.

Prior to the formation of the scheme to defraud the United States, formed on about January 1st, 1891, as aforesaid, the brush or logs and brush used in these jetties in the Savannah District were put into the construction principally in three ways:

Fascines. One of the principal materials used in the construction of jetty work was the brush fascine.

These fascines were usually among other things specified to be made of live brush, well trimmed, the butts of the brush to be placed in alternate directions, and the fascine to be closely choked by ties of wire or tarred rope at intervals of

every two or three feet, so as to form an artificial log of the diameter of from 9 to 15 inches at the choke, and from 12 to 20 feet in length, according to the specifications for the particular contract. The form of construction of a fascine being illustrated by Drawing Exhibit A filed herewith.

(1) There were the training-walls and spur-dams built up of fascines, placed in the training-wall or dam by the contractor separately; that is to say, each fascine being put in place one at a time. Prior to the formation of said fraudulent scheme as aforesaid the prevailing contract prices for fascines so put in the works in the District ranged from 89 cents to $1.10 per cubic yard. That is to say the fascines were piled up on top of each other and measured, and the fascine material contained in a square yard of surface, and of the depth of one yard, cost the Government when placed in the work only from 89 cents to $1.10, according to locality.

(2) The Brush Mattress. In the contracts let prior to the formation of the said scheme to defraud, where the contract provided for the construction of training-walls or spur-dams to be built up of fascines, it was provided that the Engineer officer in charge could require the fascines to be placed in the jetty either singly or in mats, and when made into mats and so placed, the mats were paid for by the amount of fascine material composing them, at the contract price of fascines per cubic yard, ranging from 89 cents to $1.10 per cubic yard as aforesaid. These fascine mattresses were usually constructed of a layer of fascines placed side by side, upon a layer of traverse poles spaced at intervals of about 6 feet apart, and upon top of the layer of fascines were placed another layer of poles similarly spaced at intervals, the upper and lower poles being joined by ties of wire or tarred rope, so as to form a flexible mattress.

The form of construction of such a mattress is illustrated by drawing, Exhibit B, filed herewith.

In some of the contracts the fascines rest upon a grillage of poles instead of upon a single layer of poles at the bottom, and also there was a corresponding grillage of poles on top of the fascines. By a grillage of poles is meant a layer of poles spaced a few feet apart crossed by a second layer of poles similarly spaced. The form of construction of such a mattress is illustrated by Exhibit C, filed herewith.

When a mattress is constructed as shown in drawing, Exhibit B, the fascines are said to be placed between a half

grillage of poles at the bottom and a half grillage of poles at the top, as there are only half as many poles used in such case, as where there is a full grillage of poles at the bottom and at the top as shown in drawing Exhibit C.

When a mattress was so constructed it was towed to its place, a single mat at a time, and loaded with stone and sunk in its place. The stone used in sinking such mats or in holding down the fascines when put in separately being paid for by the government in addition to the price paid for the fascine material.

The reason that the contractor could afford to put in the fescines in mats as cheaply as when put in separately was that the extra material required in binding poles, was fully compensated for by the less labor and difficulty involved in sinking the larger number of fascines going to make up a mat at one performance.

As a consequence the Government obtained such fascine mattress as it used in said Savannah District prior to the formation of the conspiracy at prices ranging from 89 cents to $1.10 per cubic yard. Equivalent for a mattress made of fascines 9 inches, or one fourth of a yard in diameter, to 22 1/4 to 27 1/2 cents per square yard of mattress surface, or equivalent for a mattress made of fascines 12 inches in diameter to 29 2/3 to 36 2/3 cents per square yard. Or equivalent for a mattress made of fascines 18 inches in diameter to 44 1/2 to 55 cents per square yard.

(3) The Log Mattress. There was also used in said Savannah District in jetty construction prior to the formation of said scheme to defraud what is commonly called a "log mattress." This is sometimes called, however, a "log and brush mattress" because both logs and brush were used in combination in its construction.

The principal design of this mattress was a raft of logs of the average diameter of 12 inches, placed side by side and fastened together with cross-poles placed as binders 8 feet apart and spiked to the logs, and upon this raft was placed a top layer of live brush, or live brush fascines, from 5 to 6 inches in thickness in the finished work, and secured in place by poles lashed to the binders of the raft, thus making a mattress 18 inches thick, exclusive of the binding poles. The form of construction of such a log mattress is illustrated in Drawing Exhibit D filed herewith.

These log mattresses were always paid for in contracts under General Gilmore and under Carter at a stipulated price

by the square yard surface measure, the price averaging about 47 cents per square yard prior to the formation of the conspiracy.

Prior to the formation of said scheme to defraud, whenever specification had been drafted by Gilmore or by Carter in which it was provided that two or more different designs of mattress under the same contract should be bid on by the contractor, it was always provided that separate prices should be bid for furnishing either of the designs the engineer might call for. Or if the contract called for only one price to be bid for two or more designs, it always left it optional with the contractor to furnish that design which he could furnish the most cheaply. So that always the contractor would know precisely the thing upon which he was bidding before the contract was let, and at the time he had to put in his bid in competition with other bidders.

V.

Details of the fraud introduced into and under the contracts.

Your orators further aver and charge that early in 1891 the said Oberlin M. Carter, as engineer officer in charge of said Savannah District, commenced to put in operation said fraudulent scheme in respect to the drafting, and by his recommendation causing to be approved by his official superiors, specifications so drawn as to enable said conspirators to consummate said fraud upon the United States.

(1) That in the drafting of the specifications for contract No. 4572 for Cumberland Sound, advertised March 17, 1891, and let May 4, 1891, to John F. Gaynor, the said Oberlin M. Carter, as such engineer officer in charge, for the purpose of carrying into effect said fraudulent scheme introduced into the specifications upon which proposed bidders would be required to base their bids for the contract, three designs of matters. Two of these designs were for log mattresses 16 inches thick in the finished work, similar to those provided for in the Gilmore contract of October, 1886, No. 3285, for Cumberland Sound, which allowed the contractor to use the design he preferred, but Carter provided in his specifications for a third design of brush mattress made of fascines 9 inches in diameter, and required bids for it by the square yard, instead of by the cubic yard as such mattresses had been therefore been paid for, and he provided in the specifi-

cations that the engineer in charge should have the option of substituting the "brush mattress" for the log mattress in the construction of the work.

Having succeeded by use of said fraudulent scheme in suppressing competition and awarding said contract to John F. Gaynor at the rate of 99 cents per square yard for log mattresses, being double the price of the same theretofore prevailing, and at the rate of 97 cents per square yard for brush mattresses, being nearly four times the price of such mattresses theretofore prevailing in said Savannah District, the said Carter corruptly exercised his option in favor of said contractor and allowed him to put in all brush mattresses at the exorbitant rate of 97 cents per square yard.

(2) By a corrupt use of a similar brush mattress in the specifications in contract No. 4637 of July 20th, 1891, for jetties at Forth Clinch, let nominally to William H. Walsh, but for the benefit of said conspirators, and by providing in the specifications for a bid for mattresses per square yard and fascines per cubic yard, but leaving it optional with the engineer in charge to use either fascines separately or mattresses, and by the use of the said other means provided in said scheme for suppressing competition, the said Oberlin M. Carter succeeded in awarding the said contract as aforesaid at 99 cents per square yard for brush mattresses, equivalent to about $3.56 per cubic yard, while the fascines themselves were awarded in the same contract at only $1.57 per cubic yard when placed in singly and whereas theretofore such mattresses had only cost the Government the price of the fascines in them by the cubic yard. And having so awarded said contract said Carter corruptly exercised his option as Engineer in charge, by allowing said contractor to put into the work 7,744 square yards of mattresses at $3.56 per cubic yard, and only 125 yards of fascines at $1.57 per cubic yard.

(3) In the specifications drafted by said Oberlin M. Carter as such Engineer in charge, for the contract No. 4820 next let to Edward H. Gaynor, September 16, 1892, the said Oberlin M. Carter in pursuance of said fraudulent scheme and corrupt agreement, introduced the following novel features by which it was placed in the power of said Carter, at his will, to shut out all competition with the said conspirators in the bidding for such contract work, and which fraudulently secured to said conspirators an increase of four

times the price for brush mattresses previously prevailing for same at the same locality.

That is to say: Carter so drafted the specifications for contract 4820, which were adopted on his recommendation, as to provide for three different designs of mattresses, any one of which might be called for at his option by the engineer in charge, and to be paid for at the *same price* per square yard for either design furnished by the contractor.

The first design of mattress so provided for corresponded to the log-mattress 18 inches thick, Exhibit D hereinbefore referred to.

The second design of mattress so provided for corresponding to the brush or fascine mattress, Exhibit C, hereinbefore referred to, except it had an additional cross-layer of fascines in it, the additional fascines being spaced the same distance apart as the cross poles.

The third design of mattress so provided for corresponding to the brush or fascine mattress 9 inches thick, Exhibit C, and being the same as the second design without addition of the cross fascines.

And while prior to the formation of said fraudulent scheme the prevailing price in said Savannah District of the first design of mattress was double that of the third design, said Oberlin M. Carter joined them in his specifications to be bid on at one price.

And when by means of suppressing competition through said fraudulent scheme said Oberlin M. Carter succeeded in awarding said contract to Edward H. Gaynor for the benefit of said conspirators, at the price of $1.05 per square yard surface measure, equivalent to $4.20 per cubic yard for brush material in the 3d design, or 300 per cent. higher than the prices which had prevailed in the same locality, said Oberlin M. Carter fraudulently exercised the option reserved to him as such engineer in charge under the specifications, in the manner of which the conspirators only were apprised before the bidding, and allowed the conspirators to put in all brush mattresses of the Third and cheapest design, as aforesaid.

(4) In the specifications drafted by said Oberlin M. Carter as such engineer in charge for the contract No. 4960, next let to the Atlantic Contracting Company October 22, 1892, known as the "Big three million dollar contract for Savannah Harbor," the said Oberlin M. Carter, in pursu-

ance of said fraudulent scheme, put in the same three designs of mattresses to be bid on at one price, as in contract 4820, and giving the same option to the engineer to select after the letting of the contract any one of the three for use in the construction, and having succeeded by means of said fraudulent scheme in awarding said contract to the Atlantic Contracting Company for the benefit of said conspirators, at the exorbitant and fraudulent price of 95 cents per square yard of mattress surface, equivalent to $3.80 per cubic yard for brush material in the 3d Design, the said Oberlin M. Carter as such engineer in charge fraudulently exercised the option reserved to him as Engineer in charge and allowed the conspirators to put in all the mattresses of the third and cheapest design.

(5) Your orators aver and charge that not content with the fraudulent addition of about 300 per cent. to the cost of the fascine mattresses secured to the contractor in the letting of the contracts as aforesaid, the said Oberlin M. Carter under contracts Nos. 4820 and 4960, commenced about September, 1893 to allow the contractors operating said contracts for the benefit of said conspirators, to supply in lieu of the single mattress provided for in the specifications, and to put into the jetties at one time and at one launching, a construction of from 4 to 8 or more of single mats piled up one on top of the other and forming what is called a multiple mat, in which each single mat constituted a course or layer, but from which a large part of the material required by the designs of brush mattress in the specifications was omitted, and which multiple mat was very much cheaper for the contractor to put in, than the cost of putting in the single mats composing it separately, as the specifications indicated they would be put in and authorized the Engineer to require, and as other proposed bidders had to estimate for in putting in their bids.

And said Carter allowed said contractors not only to put in said material and work not in conformity even to the cheapest design of mattress provided for in the specifications, but of the poorest and cheapest and most inferior material which he could allow passed without detection of the fraud through a fraudulent and strained construction of the specifications. And said Oberlin M. Carter as such Engineer in charge, approved for payment and paid the accounts of said contractors for such work at contract prices for said work so put in.

(6) Your orators further aver and charge that by Act of Congress passed in 1888 and repeated in Act of 1890, Supplement Revised Statutes, page 600, it was provided that river and harbor contracts shall be made "after sufficient public advertisements for proposals in such manner and form as the Secretary of War may prescribe." That Section 520 of the Army Regulations prescribed by the Secretary of War, prescribed and prescribes that the length of time for advertising for proposals for services by contractors for supplies or services should be 30 days or more or 10 days or less according to the needs of the service; large contracts for purchases or services should be 30 days or more. That Section 519 of the Army Regulations prescribed that:

"Any officer charged with the duty of making a contract or purchase is responsible under the laws and regulations for his action. Permission or orders to make a contract or purchase without competition will not justify the procedure and will not be given."

And your orators aver and charge that while prior to 1890 the contracts in the Savannah District were mostly for comparatively small expenditures, from about $15,000 to $110,000; that after 1890 some of the contracts ran up to several million dollars each, being over $3,000,000 for Savannah Harbor contract No. 4960 for 1892, over $1,000,000 for Savannah Harbor contract No. 6515 for 1896, and over $2,000,000 for the Cumberland Sound contract No. 6517 or 1896. Nevertheless said Oberlin M. Carter as such engineer in charge in pursuance of said scheme to defraud the United States and to suppress competition, did not advertise the letting of any of the contracts let by him from 1891 to 1897 inclusive for 30 days or more, but the advertisements for many of said lettings being run only for 15 to 22 days in the local papers, and for a less time in the Engineering papers in which Government advertisements were required to be published, and the time said advertisements were so run, not being a sufficient public advertisement to enable contractors in different parts of the United States to ascertain the details sufficiently to intelligently put in competitive bids.

(7) Your orators further aver and charge that from 1891 to 1897, inclusive, the said Oberlin M. Carter in pursuance of said fraudulent scheme to defraud the United States, systematically withheld from applicants therefore, as far as he could consistent with the concealment of the fraud, the speci-

fications for contracts advertised by him, and delayed and hindered such applicants in obtaining such specifications to the end that competition with said conspirators in proposals for contracts might be and was suppressed.

(8) Your orators further aver and charge, that by applying said fraudulent scheme to the drafting of the specifications, in the manner hereinbefore described for contracts No. 4572 and 4820, each of the contracts subsequently advertised and let in said Savannah District, and by applying said fraudulent scheme in suppressing competition by shortness of advertising for proposals for contracts and by withholding specifications and delaying applicants in obtaining the same, and by giving secretly to the said conspirators information as to how the said Carter, as engineer in charge, would exercise his discretion in construing specifications purposely by him made ambiguous or uncertain, the said Oberlin M. Carter, as engineer officer in charge succeeded in awarding at high, exorbitant and fraudulent prices, every jetty contract let by him in said Savannah District from 1891 to 1897, inclusive, to the said conspirators or to some one of them, or to some person or corporation, for their benefit, except one small contract, No. 5359, for Savannah River near Augusta, let to Albert J. Twiggs, July 5, 1893, and as to this one exception the said Carter applied such stringent and unfair construction of the specifications as to make the performance of the contract ruinous to the contractor, and thus prevented him from any further competition with said conspirators. A list and the dates of said contracts so fraudulently let at high, exorbitant and fraudulent prices, about 300 per cent. above the fair value of the same, for the benefit of said conspirators, from 1891 to 1897 inclusive, reference being had to the War Department file number, being as follows:

4,572, May 4, 1891, John F. Gaynor Contractor, Improvement at Cumberland Sound.

4,637, July 20, 1891, W. H. Walsh Contractor, Improvement at Fort Clinch.

4,655, Sep. 9, 1891, John F. Gaynor Contractor, Improvement at Savannah River, Augusta.

4,820, Sep. 16, 1891, E. H. Gaynor Contractor, Improvement at Cumberland Sound.

4,960, Oct. 22, 1892, Atlantic Contracting Co., Contractor, Improvement at Savannah Harbor.

4,963, Oct. 24, 1892, W. H. Walsh Contractor, Improvement at Savannah River, Augusta.
5,127, Dec. 20, 1892, Atlantic Contracting Co., Contractor, Improvement at Darien Harbor.
5,133, Dec. 20, 1892, Atlantic Contracting Co., Contractor, Improvement at Altamaha River.
5,253, Mch. 1, 1893, Atlantic Contracting Co., Contractor, Improvement at Darien Harbor.
5,254, Mch. 20, 1893, Atlantic Contracting Co., Contractor, Improvement at Brunswick Harbor.
5,811, Nov. 15, 1894, Anson M. Bangs Contractor, Improvement at Cumberland Sound.
6,049, Apr. 20, 1895, W. T. Gaynor Contractor, Improvement at Darien Harbor, &c.
6,515, Oct. 8, 1896, Atlantic Contracting Co., Contractor, Improvement at Savannah Harbor.
6,517, Oct. 8, 1896, Atlantic Contracting Co., Contractor, Improvement at Cumberland Sound.

Under each and all of which contracts so fraudulently let the said Oberlin M. Carter as such engineer officer in charge, in pursuance of said scheme to defraud the United States, allowed the said contractors to put in cheap and inferior material not in accordance with the specifications in the contracts, and fraudulently exercised in favor of the contractors the options so fraudulently reserved to him in the specifications as engineer in charge. And under each of which contracts, the said Oberlin M. Carter as such engineer officer in charge in pursuance of said fraudulent scheme approved for payment, and paid whenever in funds as disbursing officer, the accounts of the said contractors for such work at the high, exorbitant and fraudulent prices so provided in said contracts so fraudulently let.

VI.

The Division of the Money.

Your orators further aver and charge that the profits of every one of said contracts so fraudulently let for the benefit of said conspirators as aforesaid, from 1891 to 1897 inclusive were devided from time to time between said conspirators.

(1) That in the division between Benjamin D. Greene, John F. Gaynor and Oberlin M. Carter, of the net profits of

the contracts so fraudulently obtained prior to the contract No. 4820 of Sept. 16th, 1892, hereinbefore referred to, your orators are unable to state exactly what share was alloted and apportioned to the said Oberlin M. Carter, but your orator avers that amounts aggregating $16,000, were traced with reasonable certainty from the profits of said contracts back into the possession of said Oberlin M. Carter, after he had as disbursing officer paid out the same on the contracts. How much more the said Carter may have been apportioned as his share of the profits on said prior contracts is to your orators unknown.

(2) Your orator avers and charges, however, that commencing with the contract No. 4820 of September 16th, 1892, let in the name of Edward H. Gaynor, contractor, that after the payment of the cost of the work and after the payment to the other persons parties to the said fraudulent scheme as aforesaid, the profits amounting to over two million dollars ($2,000,000), of all the aforesaid contracts so fraudulently let as aforesaid, were divided from time to time, between Oberlin M. Carter, Benjamin D. Greene and John F. Gaynor in three equal shares, one of which shares was apportioned to the said Oberlin M. Carter, as his share of the profits arising from the consummation of said scheme to defraud the United States.

(3) That said Oberlin M. Carter, as engineer officer in charge of said Savannah District, usually had funds to his credit as disbursing officer in the Merchants' National Bank of Savannah, Ga., or with the Assistant Treasurer of the United States at New York, intrusted to him by the Government for disbursement to contractors on Government contracts, and when in funds during the operation of said fraudulent scheme in said Savannah District, he usually paid the contractors at the beginning of each month for the amount of the vouchers approved by him for the work of the preceding month, reserving 10 per cent. each month until the last payment on the contract.

That the better to secure his share in the fraudulent profits of the contracts, it was usual for said Oberlin M. Carter as such disbursing officer to issue the checks for the monthly payments to the contractors in two batches. One batch was deposited in the local banks at Savannah and Fernandina and used in defraying the cost of the work, and in payments to E. H. Gaynor and W. T. Gaynor and minor agents of the principal conspirators, and the other batch of checks repre-

senting the net profits, would usually be taken by said Oberlin M. Carter in person to the City of New York, and the proceeds of said checks, after said Carter was paid therefrom $75 for an allowance for his trip to New York, would be divided between said Benjamin D. Greene, John F. Gaynor, and Oberlin M. Carter, each getting a third as aforesaid.

That sometimes said Oberlin M. Carter did not go on to New York and carry the disbursing checks there for division, but would send the checks to the said Benjamin D. Greene, or John F. Gaynor who would, at the direction of the said Oberlin M. Carter pay over his third of the fraudulent profits as aforesaid, to Robert F. Westcott, (now deceased, the former father-in-law of said Carter) who would invest it and turn over the investment to said Oberlin M. Carter or otherwise dispose of it for the use and benefit of said Carter as said Carter directed.

(4) That although the work was authorized by act of Congress, the money for payment of the bulk of the work under contracts of Oct. 8, 1896, No. 6515 for Savannah Harbor and No. 6517 for Cumberland Sound, let in the name of the Atlantic Contracting Company, contract, was not available until July 1st, 1897. That by reason of the fact that all the profits of the previous contracts had been divided between the parties to the fraudulent scheme it became necessary that the parties interested should put up the money to carry on the work under these contracts of Oct. 8, 1896 until July 1, 1897, when the appropriation of money by Congress would be available, as the general plan of issuing disbursing checks monthly to carry on the work theretofore pursued could not be resorted to. To meet this necessity on or about the first day of January, 1897, the said persons devising said scheme as aforesaid, communicated each with the other, and agreed among themselves, that the said Benjamin D. Greene, John F. Gaynor and Oberlin M. Carter, would each respectively advance approximately one third of the amount which it might be necessary from time to time to advance to carry on the work under said contracts, until such time as the money appropriated by Congress for payment of the work under said contracts should become available. And it was then and there further agreed between said conspirators that all of the provisions of said scheme to defraud the United States which had been in operation by and between the said parties in said district from 1891 to that time as aforesaid, should be applied in and to the execution and completion of the work under said contracts

of October 8, 1896, which had been so fraudulently let as aforesaid, and in the obtaining of the money for the fraudulent accounts which should be rendered under said contracts to the said Oberlin M. Carter as such engineer officer in charge as aforesaid, and in the division of the said moneys between the said conspirators, except that the moneys so advanced by said Benjamin D. Greene, John F. Gaynor and Oberlin M. Carter, to carry on the work, should be paid them before the division of the profits between them as aforesaid. That in pursuance of the said scheme to defraud so modified as aforesaid, the said Benjamin D. Greene, John F. Gaynor and Oberlin M. Carter did from time to time each advance moneys to carry on the work under said contracts of October 8, 1896, until July 1, 1897, when the appropriation by Congress became available.

And the said Oberlin M. Carter as engineer did approve accounts rendered by said conspirators in the name of the Atlantic Contracting Company for large amounts charged for cheap and inferior work not done in accordance with the specifications of the contracts and at the high, exorbitant and fraudulent prices at which said contracts had been so fraudulently let, and did on or about July 6th, 1897, pay upon said accounts so approved by him the sum of $575,749.90, which said amount less the deductions for moneys so advanced by said Benjamin D. Greene, John F. Gaynor and Oberlin M. Carter for carrying on the work, and for the shares of the lesser conspirators and for advances to further carry on the work was divided in thirds between the said Benjamin D. Greene, John F. Gaynor and Oberlin M. Carter.

And the said conspirators have continued to aid and abet each other to this day in their endeavor to obtain from the United States additional moneys for work alleged to have been done under said contracts of October 8th, 1896, so fraudulently obtained at the exorbitant and fraudulent prices secured in said contracts by the operation of said scheme to defraud, and for the cheap and inferior material and work put into said construction under said contracts not in accordance with the specifications.

VII.

Carter's Investments.

(1) Your orators aver and charge that Oberlin M. Carter started out in his career in the Savannah District, without any income other than that of his salary and commutation as officer in the Corps of Engineer in the United States Army, ranging from $2,208 per annum as Lieutenant in 1890, to $3,269.50 per annum as Captain in 1897. In fact prior to 1891, he had great difficulty in making ends meet financially, and frequently resorted to borrowing money from Benjamin D. Greene, one of the contractors whose work he was then supervising. Following the formation of the scheme to defraud as aforesaid however in 1891, the said Oberlin M. Carter passed from the condition of a borrower to the condition of a capitalist, by the investment of the greater portion of his share of the fraudulent and illegal profits of the contracts so fraudulently let by him as Engineer in charge for the benefit of said conspirators as aforesaid.

These investments were secretly made by the said Oberlin M. Carter in stocks, bonds, loans and real estate, the particulars of which investments were not known to your orators until within the past year, because of the means taken by the said Oberlin M. Carter to conceal the same.

(2) As before stated it is not known in what proportion said Carter shared in the illegal profits of the 1891 contracts so fraudulently let by him further than that $16,000 is traced from that source into deposits made by him from Dec. 1891, to Nov. 7th, 1892, and from which investments were made by him in stocks and bonds to the amount of $13,438.75.

After that, however, commencing with the division of the profits under contract No. 4820, of September 16th, 1892, the division was made of the net profits as hereinbefore set forth, between Benjamin D. Greene, John F. Gaynor, and Oberlin M. Carter, by thirds each. The following table gives in one column a statement of the dates when said division of the profits of said fraudulent contracts were so made, by thirds as aforesaid, and in the next column gives said Carter's share of the profits at said respective dates, and is obtained by adding to the previous shares so obtained by said Carter his share obtained at the respective date, so as to show his accummulated profits, or the aggregate of his profits at said respective dates. And in the next column gives the aggregate of said Carter's investments from said fraudulent divisions from the beginning, held on said respective dates.

Statement of the Aggregate of Thirds of Divisions and of the Aggregate of Investments held by Carter at Corresponding Dates.

Number and dates of Division		Aggregate of Thirds Exclusive of $1,575, Arbitrary allowance Carter's Trips to New York.	Aggregate of Investments at Cost.
Number	Date		
	1893		
2	Jan. 3	12,900.04	14,320.00
3	Feb. 10	28,900.04	23,670.00
4	Mch. 13	44,900.04	46,526.25
5	Apl. 14	65,618.15	66,282.50
6	May 8	80,618.15	66,391.25
7	June 5	93,118.15	79,053.75
8	July 11	129,118.15	127,816.25
9	Aug. 7	142,118.15	127,816.25
10	Sept. 6	166,418.15	140,641.25
11	Oct. 10	178,418.15	163,591.25
12	Nov. 6	184,418.15	175,947.50
13	Dec. 4	205,418.15	182,128.75
	1894		
14	Jan. 8	221,918.15	193,766.25
15	Feb. 5	239,918.15	214,337.50
16	Mch. 5	247,918.15	233,033.75
17	July 9	277,536.02	241,237.50
18	Sept. 10	419,586.02	241,237.50
19	Oct. 5	440,586.02	294,142.50
20	Nov. 12	450,586.02	341,919.50
21	Dec. 11	458,865.93	431,453.75
	1895		
22	Jan. 17	468,507.59	441,453.75
23	Feb. 4	478,507.59	441,453.75
24	Mch. 5	485,578.47	441,453.75
25	Apl. 8	508,886.80	453,153.75
26	May 22	517,981.82	466,760.00
27	June 7	536,725.63	463,690.00
28	July 5	582,256.32	493,798.75
29	Aug. 5	589,666.31	493,798.75
30	Sept. 3	589,802.91	493,798.75
	1906		
31	May 12	595,836.35	561,471.50
	1897		
32	July 6	722,528.02	690,301.85
			Aug. 6, 1897

Your orators further aver and charge that the particular description of all said investments of the said Oberlin M. Carter's share of said divisions of the illegal and fraudulent profits of said contracts, and the details of the manner in which said Carter's share of each division is traced into the particular investments, are so voluminous that for convenience of pleading your Orator has filed herewith as Exhibit E to this bill an outline of the same as a bill of particulars, to which the usual leave of reference is prayed as often as may be desired.

(3) Your orators further aver and charge the investments made by said Oberlin M. Carter of the funds intrusted to him as a disbursing officer and which were so returned to him by the said conspirators as his share of the fraudulent fruits of the contracts so fraudulently let by him were invested from time to time by said Carter to a large extent in investments which made to him good returns in income.

The following table gives a statement at different dates of said Carter's income from this source as far as ascertainable and from his salary and commutation as an officer in the United States Army compared with his personal expenditures (not investments) as far as ascertainable at corresponding periods:

Comparison of Carter's income and expenditures:

1890	Gross expenditures	$ 4306.60
"	Gross income from salary and securities	2208.
1891	Gross expenditures	5897.83
"	Gross income from salary and securities	2836.91
1892	Gross expenditures	8354.24
"	Gross income from salary and securities	3269.50
1893	Gross expenditures	14982.74
"	Gross income from salary and securities	8882.
1894	Gross expenditures	14410.88
"	Gross income from salary and securities	16155.50
1895	Gross expenditures	20113.92
"	Gross income from salary and securities	23390.50
1896	Gross expenditures	28611.67
"	Gross income from salary and securities	28501.05

From which it will be seen that said Carter spent but a very little more (comparatively speaking) than the income from his share of the trust funds so fraudulently divided between the contractors and himself.

The 8th Avenue Property.

(4) Your orators further aver and charge, that among the investments so made by the said Oberlin M. Carter, from said fund so intrusted to him as such disbursing officer and so diverted to his own use through said fraudulent scheme as aforesaid, as traced in Exhibit E aforesaid, was the purchase for $39,763.75 by the said Oberlin M. Carter through Robert F. Westcott of certain property on 8th avenue in the Borough of Manhattan, City of New York, and which was conveyed to the said Oberlin M. Carter by Robert F. Westcott and wife, by deed dated January 7th, 1895, recorded on the records of the Register of said City and County of New York, in Liber 49, p. 456, for Section 3, and which is more particularly described as follows: "All that certain lot or parcel of land known and distinguished on a map of certain property of Henry Eckford, made by Daniel Ewen, City Surveyor, in September, 1829, on file in the office of the Register of the City and County of New York, by lot number 298, bounded and described as follows:

"Beginning at a point on the easterly side of 8th avenue in the Borough of Manhattan, City of New York, at the centre line of the block between 24th and 25th streets, running thence easterly and parallel with 24th street 100 feet, thence southerly and parallel with 8th avenue 24 feet 8 1-4 inches thence westerly and parallel with 24th street, 100 feet to the easterly side of 8th avenue and thence northerly along the easterly side of 8th avenue 24 feet 8 1-4 inches to the point or place of beginning, being premises known by the street number 286 Eighth avenue."

Your orators aver and charge that by reason of the fact that the said 8th avenue property was so purchased by the said Oberlin M. Carter, with the fund so intrusted to him as a disbursing officer as aforesaid, and so fraudulently diverted to his own use as aforesaid, the said Oberlin M. Carter took the title to the property under the implied trust to account to your orators for the same and to turn over, deliver and convey the same to your orators upon demand.

The Beirne Gordon Notes.

(5) Your orators further aver and charge that among the investments so made by the said Oberlin M. Carter, from said fund so intrusted to him as such disbursing officer and so diverted to his own use through said fraudulent scheme as aforesaid as traced in Exhibit E, as aforesaid, was a loan of $10,000 made by the said Oberlin M. Carter to Bierne Gordon of Savannah, Ga., made party defendant hereto, evidenced by a note of the said Bierne Gordon, dated November 4th, 1896, and due 5 years and 57 days after date thereof, and for said Carter's convenience Westcott having no interest therein, made payable to R. F. Westcott, for the principal sum of $10,000, and by similar interest notes for $300 each except the first one which was for $93.70, for the interest installments thereon falling due semi-annually, and which said principal note was thereafter endorsed by the said Westcott "without recourse" and delivered up to the said O. M. Carter, so endorsed. And which said principal note so endorsed was in the possession of L. Laflin Kellog, one of the attorneys of said conspirators as late as the month of October, 1900, and by him produced in Court on October 3rd, 1900, on the preliminary hearing had before Commissioner Shields in New York for removal of said Benjamin D. Greene, et al. to Georgia for trial on the charge of conspiracy to defraud the United States as hereinafter more fully set forth.

That said loan so made by the said Oberlin M. Carter to the said Beirne Gordon as aforesaid, was secured, among other things, by a Life Insurance Policy, No. 219298, known as an Endowment policy of the Mutual Life Insurance Company of New York, for the sum of $5,000, which policy was delivered to the said Carter as such security, and said Carter, as your orators are informed, retained the possession of the same himself.

That, by reason of the fact that the said loan was so made by the said Oberlin M. Carter with the fund so intrusted to him as a disbursing officer as aforesaid, and so fraudulently diverted to his own use, as aforesaid, the said R. F. Westcott, to whom said notes were payable, and Oberlin M. Carter, to whom said notes were assigned without recourse, took title to the said notes and to the said insurance policy under the implied trust to account to your Orators for the same, and to deliver the same, or the proceeds thereof, to your orators upon demand. Your orators aver and charge, on information and

belief, that said insurance policy has matured, and that the said Mutual Life Insurance Company of New York who holds the surrender-value of said policy of insurance, merely as a stakeholder, is about to pay over the same with the consent of the said Beirne Gordon to the holder of the said $10,000 note of the said Beirne Gordon, for the said Oberlin M. Carter, and will do so unless forthwith restrained by the summary orders and process of this honorable Court, and if allowed to be done, it will result in great loss and injury to your Orators.

Your Orators further aver and charge on information and belief that the said Beirne Gordon is willing and anxious to pay over to the proper party entitled, the entire balance due by him for the $10,000 loan made to him by the said O. M. Carter as aforesaid, when the proper person shall have been ascertained and decreed by a Court of competent jurisdiction, to afford him protection by its decree, and that he stands ready and willing as a stakeholder to stand to and abide such decree.

Orange, New Jersey Property.

(6) Your Orators further aver and charge that, among the investments so made by the said Oberlin M. Carter, from said funds so intrusted to him as such disbursing officer, and so diverted to his own use through said fraudulent scheme aforesaid traced in Exhibit E aforesaid, was the purchase by the said Oberlin M. Carter, at the cost of $63,020.35 for land and improvements, through said Robert F. Westcott, of a half interest in certain real estate situate in Orange, Essex County, New Jersey, the half undivided interest in said land having been conveyed to said Oberlin M. Carter by deed made to him on January 25th, 1897, by Robert F. Westcott and wife, recorded in the office of the Register of Deeds for the County of Essex, New Jersey, in Book "S 30," page 550, and which said real estate and improvements were afterward divided and Carter's interest therein was conveyed to him in severalty by a partition deed made by the said Robert F. Westcott to the said Oberlin M. Carter, dated June 9th, 1899, and which said property so conveyed to said Oberlin M Carter in severalty as aforesaid, being more particularly described as follows:

"Those two certain parcels or tracts of land situate in the city of Orange, County of Essex and State of New Jersey described as follows:

Parcel No. 1. Beginning at the intersection of the southerly side of Highland avenue with the easterly side of Berke-

ley avenue, and running thence in an easterly direction along the line of Highland avenue 109 feet more or less, thence in a southerly direction 225 feet more or less to a point 75 feet east of the easterly line of Berkeley avenue, thence in a westerly direction 75 feet more or less to the easterly side of Berkely avenue, thence in a Northerly direction along the easterly side of Berkeley avenue 225 feet more or less to the point or place of beginning.

Parcel 2. Beginning at a point on the southerly side of Highland avenue distant 349 feet, more or less, easterly from the intersection of the southerly side of Highland avenue with the easterly side of Berkeley avenue, and running thence easterly along the southerly side of Highland avenue 247 feet more or less to land now or formerly belonging to J. H. Noyes, thence in a southerly direction along said land of said Noyes 225 feet more or less to land now or formerly belonging to Zadie W. W. Grant, thence in a westerly direction along the land of said Grant 247 feet more or less to a point 315 feet more or less from the easterly side of Highland avenue, thence in a northerly direction 225 feet more or less to the point or place of beginning."

Your orators further aver and charge that by reason of the fact that the said above described property was so purchased and paid for by the said Oberlin M. Carter, with the funds so intrusted to him as a disbursing officer as aforesaid, and so fraudulently diverted to his own use as aforesaid, the said Oberlin M. Carter took the title to the property under the implied trust to account to your orators for the same and to turn over, deliver and convey the same to your orators upon demand.

Other Investments.

(7) Your orators further aver and charge that among the other investments so made by the said Oberlin M. Carter from said fund so intrusted to him as such disbursing officer and so diverted to his own use through said fraudulent scheme as aforesaid as traced in Exhibit E as aforesaid, were large amount of stocks, bonds and notes, the description of which is set forth in said Exhibit E, a large part of which is out of the territorial jurisdiction of this Court or otherwise concealed or converted into other property by those holding the same for the benefit of said Oberlin M. Carter, and all of which is held by those holding the same with notice of the fraud under the implied trust to account to your

orators for the same or for the proceeds thereof, and to turn over, deliver and convey the same to your orators upon demand.

(8) That among the investments so made in the southern District of Georgia, by the said Oberlin M. Carter with the said funds so intrusted to him as a disbursing officer and so fraudulently diverted to his own use through said fraudulent scheme as aforesaid, as traced in Exhibit E as aforesaid, was the purchase by him of 150 shares of stock in the said Propeller Towboat Company said shares being the par value of $100.00 each, and which shares your Orators charge on information and belief, still stand in the name of the said Oberlin M. Carter, or in the name of the said Lorenzo D. Carter or I. Stanton Carter, for the benefit of said Oberlin M. Carter.

Your Orators further aver and charge that heretofore, to-wit, on the 24th day of August 1900, the said Michael A. Connolly sued out in the County of Chatham and State of Georgia, an attachment returnable to the City Count of Savannah, based on an alleged indebtedness of the said Oberlin M. Carter to the said Connolly, and which attachment was levied upon said stock so purchased by said Oberlin M. Carter in the Propeller Towboat Company: That thereafter the said attachment suit was removed into the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia by the said Oberlin M. Carter, and is still pending therein.

Your orators aver and charge that said Michael A. Connolly instituted said attachment proceedings with full notice of the fact that the title of said Oberlin M. Carter in and to said stock was acquired through the fraudulent scheme set forth in this bill, and with full notice of your Orators rights and equities therein, and he acquired no right by said attachment unless subject to the superior rights of your Orators therein.

(9) That among the investments so made in the Southern District of Georgia, by the said Oberlin M. Carter with the said funds so intrusted to him as a disbursing officer and so fraudulently diverted to his own use through said fraudulent scheme as aforesaid, as traced in Exhibit E, as aforesaid was the purchase by him of 25 shares of stock in the said Savannah Brewing Company, said shares being of the par value of $100 each; And 15 shares of stock in the said Savannah Lightuage and Trust Company, said shares being of the par

value of $100 each:—And 50 shares of stock in the said Brush Electric Light and Power Company, said shares being of the par value of $100 each.

And your Orators charge and aver on information and belief that said shares of stock in said several companies above named are held in the name of said Oberlin M. Carter or of some one of the defendants named herein, for the benefit of said Oberlin M. Carter, and being so held are subject to the equities of your Orators therein as hereinbefore set forth.

(10) That among the investments so made in the Southern District of Georgia, by the said Oberlin M. Carter with the said funds so intrusted to him as a disbursing officer and so fraudulently diverted to his own use through said fraudulent scheme as aforesaid as traced in Exhibit E as aforesaid, was a loan of $10,000.00 made by the said Oberlin M. Carter to T. M. Cunningham of Savannah, Georgia, evidenced by a note of the said T. M. Cunningham dated June 29th, 1895 and due June 29th, 1900, and for said Carter's convenience, Westcott having no interest therein made payable to Robert F. Westcott, for $10,000, and by interest notes payable semi-annually for $275.00 each, and which said notes were thereafter endorsed by the said Westcott "without recourse" and delivered up to the said Oberlin M. Carter so endorsed.

That thereafter on or about July 2nd, 1900, the said William W. Mackall of the law firm of Mackall & Anderson, who had been of counsel for said Oberlin M. Carter in the said Court Martial proceedings, and who by reason thereof, had full notice that said Carter's title to said notes were acquired through the operation of said fraudulent scheme and who had full notice of your Orators rights and equities in said notes and the proceeds thereof, as the Attorney of said Oberlin M. Carter collected from said T. M. Cunningham the principal sum of $10,000 due on said note and the last due interest note amounting to $275.00.

And your Orators aver and charge that the said Mackall and Anderson, being the law firm composed of the said William W. Mackall and the said J. Randolph Anderson hold the proceeds of said fund so collected by them, charged with the trust of accounting to your Orators for the same, and in equity and good conscience should be decreed to pay over the same to your Orators with the profits thereof.

(11) Your Orators further aver and charge that to better secure the payment of his said note for $10,000, and the notes

given for interest thereon as mentioned in sub-division (5) of paragraph VII of this bill, the said Beine Gordon did on or about November 4th, 1896, execute in favor of the said Robert F. Westcott a deed to secure said debt to that certain parcel or lot of land more particularly described as lot 8 Holling Tything Percival Ward in the City of Savannah, Chatham County, Georgia, and known as the Beirne Gordon residence, a more particular description of which will be found in the said conveyance from the said Beirne Gordon to the said Robert F. Westcott of record in the Clerk's office of the Superior Court of Chatham County, Georgia. That at the same time the said Oberlin M. Carter as Attorney in fact for said Robert F. Westcott, executed a bond to the said Beine Gordon to reconvey said property to the said Beirne Gordon upon the payment of said indebtedness. That said Robert F. Westcott had no real interest in said loan, and that said notes and security were taken in his name merely for the convenience of said Carter in carrying out and concealing the said scheme to defraud the United States as aforesaid:—

That said Robert F. Westcott thereafter endorsed said note without recourse and delivered the same to the said Oberlin M. Carter; That by reason thereof the interest of the said Robert F. Westcott in said residence property of the said Beirne Gordon, if any he had, passed to the said Oberlin M. Carter: But that in truth and in fact the said Robert F. Westcott after the making of said conveyance to him, repeatedly disclaimed any interest in said loan or in said property, and even testified to that effect on the proceeding before the Commissioner for the removal of said Benjamin D. Greene et al to Georgia, as hereinafter mentioned.

Your Orators aver and charge that early in the Fall of 1900 your Orators gave notice to the said Beirne Gordon of the interest and rights claimed by your Orators in the said loan and properties and notified him not to make further payments thereon. By reason of the premises your Orators aver and charge that they are subrogated to all the rights and interests of the said Oberlin M. Carter against the said Beirne Gordon in, of and to, said notes and indebtedness and the security thereof and particularly to the real estate security within the Southern District of Georgia aforesaid, and your Orators are entitled to have a decree declaring the same, and declaring that said moneys due on said loan by the said

Beirne Gordon shall in due course be paid over to your Orators.

VIII.

The Board of Inquiry.

(1) Your orators further aver and charge that it having been determined by the new Chief of Engineers, General John M. Wilson, who succeeded to that office about February, 1897, to make a general change of the officers in the Corps of Engineers from one district to another for the general good of the service, and that fact becoming known to the said Oberlin M. Carter he succeeded in causing himself to be appointed as Military Attaché to the Court of St. James, and also as a member of the Nicaragua Canal Commission, and the said O. M. Carter being superseded as engineer officer in charge of the Savannah District only July 17, 1897, his successor, Captain Cassius E. Gillette, took charge of the district July 20th, 1897.

Within two weeks after taking charge of the Savannah District facts began to come to the attention of Captain Gillette showing irregularities in the administration by said Carter of the affairs of the district of the gravest character.

It was developed that a large number of the official files and documents of the office had been with a great deal of his private papers packed up by Carter in a file case, which he caused to be boxed and which he directed to be shipped to him. This box was detained.

This state of affairs led to the appointment by the president of a board of inquiry, of which Colonel George L. Gillespie (now General Gillespie) was president.

In the meantiem the said Oberlin M. Carter hurried back from England. Arriving in New York City early in September, 1897, said Carter expected to be arrested, and took out of his safety deposit box securities of the cost value of $414,437.50 which he had there, constituting a part of the investments described in Exhibit E, which he had made from his share of the illegal profits of the contracts as aforesaid, and turned them over to the said Benjamin D. Greene and John F. Gaynor at the Hoffman House for safe keeping.

These securities were in a day or two delivered by said Benjamin D. Greene, to the said Robert F. Westcott for safe keeping for said Carter, and Westcott placed them in his safety deposit vault. Shortly thereafter the facts in regard

to Carter's guilty connection with said Benjamin D. Greene and John F. Gaynor in the contracts began to be given publicity in the newspapers and the said Robert F. Westcott, uopn the advice of his counsel and in the presence of his counsel, delivered back to Carter all of the aforesaid securities so turned over to Westcott by said Greene, and took said Carter's reecipts for the same in detail, which receipts are dated respectively October 11, 1897, and October 29, 1897, and which original receipts came to the knowledge and into the possession of your orators on or about the month of July, 1900, and are held subject to the inspection of the Court.

Your orator further avers and charges that said Board of Inquiry appointed to inquire into the propriety of Court-Martial proceedings met in Savannah on September 21, 1897, and the said detained file case was opened by the said Oberlin M. Carter in the presence of said Board, and in it were found a large mass of incriminatory evidence tending to show conspiracy between the said Benjamin D. Greene, John F. Gaynor and Oberlin M. Carter in such contract work, aforesaid in Savannah District, and showing that said Carter's personal expenditures had run up from about $4,300 per annum in 1890 to $28,611.67 in 1896, as hereinbefore set forth, and showing that the income so spent by said Carter was derived from a large amount of securities which Carter was handling during said period. And said Carter in order to explain his possession of said securities, and his spending of the income from the same, caused the said Benjamin D. Greene and said John F. Gaynor to come before said Board and make statements in his presence to the effect that neither the said Oberlin M. Carter nor the said Robert F. Westcott had been in any way beneficially interested in any of said contracts let in said Savannah District, and the said Carter himself made before the said Board a like statement, and further stated that the large income so spent by said Carter from securities was from gifts given him by the said Robert F. Westcott, his former father-in-law, from the private fortune of said Westcott, to whom the securities belonged and in which Carter had no interest. Your orators further aver and charge that after due investigation said Board of Inquiry recommended the convening of a Court Martial to try said Oberlin M. Carter on the charge, among other things, of conspiracy with the said Benjamin D. Greene, John F. Gaynor and others to defraud the United States

as hereinbefore set forth, although at that time the details by which the said conspiracy was carried out and the money divided between the conspirators as hereinbefore set forth was not fully known.

The Court Martial.

(2) Your orators further aver and charge that in due course a Court Martial was duly constituted and convened at Savannah on the 12th day of January, 1898, of which General Elwell S. Otis was president, and the other members being all distinguished engineers or officers distinguished in other branches of the military profession. The trial of Captain Carter before this Court Martial on the charges was continued through three months and attracted more attention and was given great publicity through the newspapers and otherwise than any other similar event in the history of the country, and the details of the evidence published every day in almost every important newspaper throughout the United States gave a notoriety to the facts in issue in this case such as probably no similar case has ever had.

Before this Court Martial the said Carter and the said Benjamin D. Greene were volunteer witnesses in behalf of said Carter, and again stated that neither said Robert F. Westcott nor the said Carter had been interested beneficially in said contracts, and that the said securities handled by said Carter were the securities belonging to the private fortune of the said Robert F. Westcott, which said Carter had no personal interest, but the income from which had been given him by said Westcott. Your orators further aver on information that the said Oberlin M. Carter endeavored to induce the said Robert F. Westcott to appear before said Court Martial and testify falsely to the same effect, but the latter while he did not desire to testify against the husband of his dead child, would not consent to go upon the stand otherwise than to tell the truth of the transaction, and to disclaim any interest in these securities and investments. To avoid testifying against his said son-in-law, said Robert F. Westcott departed to Europe and remained away during the Court Martial proceedings.

The said Oberlin M. Carter however induced his brother-in-law Robert E. Westcott to voluntarily appear before said Court Martial and to testify in his behalf as to said Robert F. Westcott having given "money" to said Oberlin M. Car-

ter, to create the impression that the income so spent by said Oberlin M. Carter had been gifts from his father-in-law, although the said Robert F. Westcott had told the said Robert E. Westcott that this was not true.

The said Oberlin M. Carter also induced his own brother I. Stanton Carter, defendant to this bill, who had been an inspector under said Oberlin M. Carter on the said contract work in Savannah District, and who was familiar with the fraudulent character of the work done, to testify in his behalf before the said Court Martial as to seeing Robert F. Westcott hand over money to said Oberlin M. Carter. And the said I. Stanton Carter was present at said Court Martial during said trial and was fully apprised of the fact that said Oberlin M. Carter then fully disclaimed any interest in said securities and investments other than in the income spent, which he claimed as having been given him by the said Robert F. Westcott.

Your orators further aver and charge that, by reason of the fact that the said Court Martial had no power to compel civilian witnesses to testify, and no power to compel such witnesses to produce books and papers, the evidence before said Court Martial did not develop the divisions of the money paid on said contracts, between the conspirators nor trace and locate the specific funds so divided into specific securities, as has since been done and set forth in this bill. Nevertheless the evidence of conspiracy to defraud the United States, entered into between the said conspirators in the letting of the contracts and in the doing of the work under them, and the possession by Carter of so large an amount of securities from which he was enjoying the income without any satisfactory explanation furnished proof so plain of the guilt of said Oberlin M. Carter that he was convicted by said Court Martial, and sentenced to dismissal from the army, to pay a fine of $5,000 and to be imprisoned at hard labor for five years.

The Appeal.

(3) Your orators further aver and charge, that an appeal was made by said Oberlin M. Carter to the President of the United States to review the judgment of the said Court Martial. That on account of the presence of public business consequent upon the pendency of the war with Spain, there was some delay in the disposition of said ap-

peal, and the Attorney-General to whom a review of the evidence was referred by the President, did not reach a conclusion confirming said judgment until about the the 29th day of September, 1899, and this was followed by the confirmation of the judgment by the President, following which the said Oberlin M. Carter was placed in confinement, and after some preliminary efforts made by him to obtain release by habeas corpus proceedings he was imprisoned in said Penitentiary at Fort Leavenworth, Kansas.

The Indictment of Greene and the Gaynors, et al.

During the pendency of said appeal such original documents and evidence throwing light upon the frauds committed as aforesaid were in the possession of the President or the Attorney-General for him. As soon as the said appeal was disposed of, the said evidence was turned over to the District Attorney for the Southern District of Georgia, who forthwith proceeded to put said evidence before the Grand Jury for said District, and on the 8th day of December, 1899, said Grand Jury returned a true bill of indictment against the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connolly and Oberlin M. Carter, charging them with conspiracy to defraud the United States by and through said scheme to defraud as substantially set forth in this bill.

The Hearing for Removal.

(4) The said Benjamin D. Greene, John F. Gaynor, William T. Gaynor and Edward H. Gaynor were arrested in New York City on December 11th, 1899, on warrants issued by John A. Shields, United States Commissioner for the Southern District of New York, based upon said indictment and affidavit thereto, and being in due course identified by evidence as the defendants therein, were committed in default of bail to await a warrant of removal, from his Honor, Judge Addison Brown, the District Judge, to Georgia for trial. The Judge who held the matter under advisement some months, on June 26th, 1900, made an order referring the case back to the Commissioner to take evidence on the merits as to the guilt or innocence of the accused for the purpose of establishing probable cause of guilt.

On July 6th, 1900, the hearing was renewed before Commissioner Shields, and with some short recesses was proceeded with, and a large amount of oral and documentary evidence on all features of the case was put in on both sides and until December 23, 1900, when the case was submitted to the Commissioner for his finding on the evidence. On March 21, 1901, the Commissioner, who had the voluminous record under consideration in the meantime, made his finding of probable cause of guilt and again committed said defendants into custody for removal to Georgia for trial.

On the 23d day of May, 1901, his Honor Judge Brown made an order affirming the finding of said Commissioner and directing the removal of the said defendants to Georgia for trial.

Your orators further aver and charge that while said hearings were being proceeded with your orator's agents and attorneys, by great labor and strenuous efforts, were enabled through the greater effectiveness of the processes of the Civil Courts, to obtain a large amount of documentary and other evidence from banks, brokers and others, unknown to your orators until then, demonstrating the division of the fruits of the said fraudulent scheme between the said conspirators as set forth in this bill.

The said Robert F. Westcott too had returned to the United States, and the case against his son-in-law Carter having been ended by his imprisonment under sentence in the penitentiary, expressed his willingness to testify as against the other conspirators to the facts within his knowledge and turn over to the Government all his checks, check books, and documents bearing upon questions in issue. This the said Westcott did, and it was found by the Government's expert accountant, as testified to at said hearing, that while a considerable part of the proceeds of said divisions of the profits of said contracts had passed through said Westcott's hands, and while a large part had been handled through the banks in Westcott's name under powers of attorney held by said Carter, that said Westcott had retained no part of the same, but that the same or the investment of the same almost immediately after division found its way into the possession of said Oberlin M. Carter, who proceeded to enjoy the income therefrom.

Notice to American Mortgage Company.

(5) The testimony of said Robert F. Westcott on said hearing before the said Commissioner, which was concluded October the 5th, 1900, was a notable event, and on account of the great interest which had been excited over the case throughout the country, and the testimony of the said Westcott denying that he had ever had any interest in these contracts, or ever had any pecuniary interest in the securities and investments aforesaid, and particularly in the said 8th avenue property and Orange, New Jersey, property, was given wide publicity through the newspapers and otherwise.

So that the said American Mortgage Company, party defendant hereto, whose principal officers are attorneys practicing law in the City of New York, had, as your orators are informed, believe and so charge, by the notorious character of the case, and by reason of the fact that said mortgage was executed by said Oberlin M. Carter while in prison, and otherwise full, actual and constructive notice, at and before October the 8th, 1900, the date they took said mortgage, that said Oberlin M. Carter held the title to said 8th avenue property in fraud and under the implied trust to account to your orators for the same, as aforesaid.

Nevertheless, the said American Mortgage Company with full notice of your orators rights as aforesaid, on October the 8th, 1900, while said hearing was in progress and accounts of the same were being published from day to day in the newspapers, accepted from said Oberlin M. Carter a mortgage on said 8th avenue property for the alleged consideration of $23,000 then and there alleged to have been loaned, which mortgage on its face put the said company on notice that it was executed by the said Oberlin M. Carter, while in the penitentiary at Fort Leavenworth, Kansas, as aforesaid. By reason whereof your orators aver that said American Mortgage Company acquired no right in and through said mortgage as against the right and equity of your orators in said 8th avenue property as aforesaid.

IX.

Lorenzo D. Carter and I. Stanton Carter join the conspiracy.

(6) Your orators further aver that the said Lorenzo D. Carter, party defendant hereto, is an uncle of the said Ober-

lin M. Carter, and that Lorenzo D. Carter from the time of Oberlin M. Carter's conviction by said Court Martial up to this time has taken a strong and active part in endeavors to gain the said Oberlin M. Carter's freedom, and he as well as the said I. Stanton Carter have been from said time of Carter's conviction fully cognizant of the fact that the said Oberlin M. Carter had no interest in any of the aforesaid securities or investments, except such as he had acquired in pursuance of said scheme to defraud your orators as aforesaid. Nevertheless the said Lorenzo D. Carter and the said I. Stanton Carter did on or about the time of the confirmation of said Court Martial proceeding aforesaid, join said conspiracy to defraud the United States as aforesaid and agree with said Oberlin M. Carter to aid and bet him in holding and concealing from your orators the assets into which the said Oberlin M. Carter had so diverted the funds intrusted to him as disbursing officer as aforesaid.

Power of Attorney to I. Stanton Carter.

(7) In pursuance of said agreement the said I. Stanton Carter on or about the 2d day of October, 1899, accepted from said Oberlin M. Carter as your orators are informed, believe and so charge, a power of attorney from the said Oberlin M. Carter, authorizing the said I. Stanton Carter to convey or dispose of any of the aforesaid assets by and in the name and stead of the said Oberlin M. Carter, and especially designed to convey the said 8th Avenue property in the City of New York, and the said Orange, New Jersey property, which Power of Attorney is recorded in the office of the Register of Deeds in and for the County of New York, in Liber 9, of Powers of Attorneys, page 314, on January 9th, 1901. And your orators charge that said Power of Attorney is a cloud upon the title and menace to the interest of your orators in said property and in equity and good conscience should be cancelled.

8th Avenue property conveyed to Lorenzo D. Carter.

(8) That in pursuance of said agreement the said Oberlin M. Carter, by I. Stanton Carter, under said Power of Attorney, did on November 15th, 1900, by deed convey to the said Lorenzo D. Carter, and the latter did accept for the alleged consideration of $10,000, the equity of redemption

in said 8th Avenue property, which deed is recorded in the records of the Register's office of said City and County of New York, in Liber 74, Folio 158 Section 3, and that Lorenzo D. Carter holds the same with full notice of your orator's rights therein and under the implied trust to account to your orator for the same on demand.

Orange, N. J., Property Conveyed to Lorenzo D. Carter.

(9) Your orators further aver and charge that on the 23d day of October, 1900, the said Oberlin M. Carter by the said I. Stanton Carter under the aforesaid power of attorney by deed conveyed to Frank P. Blair of Chicago, Illinois, the aforesaid Orange, New Jersey property, which had been previously conveyed to said Oberlin M. Carter by deed of June 9th, 1899, as hereinbefore mentioned for the alleged consideration of one dollar, which deed is recorded in the office of the Register of Deeds of Essex County, New Jersey, in Liber "U. 33," p. 213. That said Frank P. Blair was one of the attorneys for said Oberlin M. Carter in the said Court Martial proceedings, and took the title to said property with full notice of the fraud by which the said Oberlin M. Carter had acquired the same, and took the same for the purpose of holding the same for the said Oberlin M. Carter. That notwithstanding said conveyance to said Frank P. Blair as aforesaid the said Oberlin M. Carter by the said I. Stanton Carter under the aforesaid power of attorney by deed dated January 25th, 1901, and recorded in the office of the Register of Deeds for said County of Essex, New Jersey, in book "B. 34, p. 53," conveyed to said Lorenzo D. Carter of Oakland, Illinois, the same aforesaid Orange, New Jersey property which had been so conveyed to said Frank P. Blair aforesaid for the alleged consideration of $100.00. That the said Lorenzo D. Carter took the said conveyance to hold the said property for the benefit of said Oberlin M. Carter in pursuance of the aforesaid agreement he had made with said Oberlin M. Carter and with full knowledge of the fraud by which the Oberlin M. Carter had acquired the same as aforesaid.

That thereafter on May 13th, 1901, by quitclaim deed for the alleged consideration of one dollar, the said Frank P. Blair and Florida Blair, his wife, conveyed to the said I. Stanton Carter of Chicago, Illinois, the same Orange, New Jersey property, which had been so conveyed to the said

Frank P. Blair on October 23, 1900, as aforesaid, and the said I. Stanton Carter took the said conveyance to hold the said property for the benefit of said Oberlin M. Carter, and with full knowledge of the fraud by which the said Oberlin M. Carter had acquired the same as aforesaid.

Your orators further aver and charge that by reason of the premises the said Lorenzo D. Carter and the said I. Stanton Carter hold the title to the said Orange, New Jersey property so conveyed to them under the implied trust to account to your orators for the same, and to turn over, deliver and convey the same to your orators upon demand.

X.

Your orators further aver and charge that the said I. Stanton Carter and the said Lorenzo D. Carter have been and are collecting the rents, issues and profits of the said property on 8th avenue in New York City, and of the said Orange, New Jersey property aforesaid, and removing and secreting the same. That in case of the destruction of the improvements on said property by fire your orators' interest in said property would be entirely swept away and lost, and that it is necessary for the protection of the interests of your orators that a receiver be forthwith appointed by this court to take charge of, hold and protect until the further order of the Court, all of the aforesaid properties within the jurisdiction of this Court, and to take charge of and hold such other of the properties or proceeds thereof, in the jurisdiction of this Court, into which the funds so intrusted to said Oberlin M. Carter as a disbursing officer have been so fraudulently diverted and invested, as aforesaid, and that in due course the appointment of such receiver should be made permanent.

XI.

Forasmuch as your orators can have no adequate relief, except in this Court, and to the end, therefore, that the defendants may, if they can show why your orators should not have the relief hereby prayed for, and full, true, direct and perfect answers make to the matters hereinbefore stated and charged, but not under oath, answers under oath being hereby expressly waived, your orators pray as follows:

(1) That this Court will forthwith appoint a temporary

receiver to take charge of the aforesaid property within the jurisdiction of this Court as hereinbefore set forth until a hearing can be had on rule nisi to be issued in this cause.

(2) That in due course such receiver shall be appointed pendente lite.

(3) That the Court will in due course by its final decree declare all of the aforesaid investments within the jurisdiction of the Court, into which the funds so intrusted to said Oberlin M. Carter as disbursing officer and so fraudulently diverted to his own use as aforesaid, in the hands of the defendants and of all persons holding the same for the benefit of said Oberlin M. Carter, or taking the same with notice of the fraud, are properties held in trust for orators and will decree a delivery of the same or proceeds thereof to your orators or a conveyance of the same to your orators, on a sale of the same and the delivery of the proceeds to your orators as the nature of the case and justice may require.

(4) That the Court will decree a cancellation of said power of attorney given by said Oberlin M. Carter to said I. Stanton Carter.

(5) That the Court will grant a restraining order and injunction in due course restraining any and all parties to this suit their agents and attorneys from in any manner conveying away, disposing of or incumbering pendente lite any of the properties described on Exhibit E to this bill, or the re-investments thereof.

The Propellor Tow Boat Company: The Savannah Lighterage and Trust Co, The Brush Electric Light and Power Company: and The Savannah Brewing Company are made parties defendant hereto to prevent the transfer on the books of said companies of the Stock in said respective Companies, as purchased by said Oberlin M. Carter and to bind the said Stock by the final decree of the court in this cause.

(6) That the Court will decree that the amount due from said Mutual Life Insurance Company, of New York, on said insurance policy given as security to the aforesaid Beirne Gordon notes as well as the balance due from said Beirne Gordon on said notes shall be paid over to your orators as a part of said trust fund to which orators are justly entitled as aforesaid. And decree that the security to said notes in said real estate as held for the benefit of your orators.

(7) That whenever other and additional persons within the jurisdiction of this Court shall become known holding with notice of the fraud any of said properties into which said

fund so intrusted to said Oberlin M. Carter as disbursing officer has so fraudulently been diverted, and the details of the concealment of said properties shall have been sufficiently developed, that your orators may be allowed to make them parties hereto by suitable amendment with apt allegations and prayers.

(8) May it please your Honors to grant unto your orators the Court's most gracious writ of subpoena, directed to the said Oberlin M. Carter, at present residing in the Penitentiary at Fort Leavenworth, in the State of Kansas, to the said Lorenzo D. Carter, residing at Oakland, Coles County, Illinois, to the said I. Stanton Carter, residing at Chicago, Illinois, to the said Beirne Gordon, residing at Savannah, Georgia, and to the said Mutual Life Insurance of New York, a corporation having its principal place of business at No. 32 Nassau street, in the City of New York. Propellor Towboat Company the said Savannah Lighterage and Trust Company the said Brush Electric Light and Power Co. the said Savannah Brewing Co the said Michael A Connolly the said William W Mackall and the said J Randolph Anderson all residing at Savannah in said Division and District, as aforesaid.

(9) Inasmuch as the defendants Oberlin M. Carter, Lorenzo D. Carter, I. Stanton Carter and Beirne Gordon are not to be found in the territorial jurisdiction of this Court. Your orators pray that the Court will make a suitable order for service upon them by publication in accordance with the statute in such case made and provided.

(10) May it please your Honors to grant unto your orators such other and further relief as the nature of their case may require and to the Court may seem meet and appropriate.

(11) Your orators on the 30th day of July 1901, filed in the Circuit Court of the United States for the Southern District of New York a bill of complaint of similar tenor and effect to this bill against said Oberlin M. Carter, Lorenzo D. Carter, I Stanton Carter, Beirne Gordon, The Mutual Life Insurance Company of New York and others seeking to subject to like equities the properties in that jurisdiction constituting the investments made by said Oberlin M. Carter of the funds intrusted to him as disbursing officer, which bill is now pending and a temporary receiver has been appointed by that Court to take charge and preserve said properties until the further order of the Court. Your orators pray that this bill

be taken as auxiliary to said bill so pending in New York, as aforesaid.

MARION ERWIN
Special Assistant Attorney General
Solicitor for Complainants

United States of America, }
Southern District of New York, } ss.:

On the 3rd day of August, 1901, before the undersigned personally comes Edward I. Johnson, who being duly sworn, deposes and says that he is a bank examiner by profession; that he has for two years and over been engaged under employment by the United States in working out through the accounts and documents in the Engineer's office for the Savannah District, and the accounts of Oberlin M. Carter, Benjamin D. Greene, John F. Gaynor, R. F. Westcott and others, in the banks and brokers' offices in New York and elsewhere, the details of the frauds set forth in the foregoing bill; that he has read the testimony of the witnesses in the court Martial proceedings therein referred to, and in the proceedings for removal of Benjamin D. Greene et al., therein referred to, and he has read the said bill and is familiar with the facts set forth in said bill, and that the facts therein stated are true to the best of his knowledge, information and belief.

EDWARD I JOHNSON

Subscribed and sworn to before me this 3rd day of August, 1901.

THOS ALEXANDER
U. S. Commissioner Southern District, N. Y.

Endorsement

Bill. Filed in Clerk's office U. S. Circuit Court Southern District of Georgia, Eastern Division, Aug 5, 1901 H. H. King Clerk.

Memorandum

Exhibits A. B. C. D. and E to this Bill are omitted because they are identical with the Exhibits to the Bill for the Northern District of Illinois, similarly lettered.

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

United States of America,
vs.
Oberlin M. Carter, *et al.* } Bill &c

Upon consideration of the sworn allegations of the foregoing bill, It is ordered by the Court that the defendants therein named show cause before the Circuit Court of the United States for the said Division and District at the United States Court Room in the City of Savannah at 10 o'clock A. M. on the 7th day of November, 1901, or as soon thereafter as the case can be heard, why the prayers of said bill for receiver and injunction pendente lite should not be granted. In the meantime the said defendants, their agents and attorneys are restrained from disposing of any of the said properties in which the United States claim an interest as set forth in said bill until the further order of the Court.

August 10, 1901.

EMORY SPEER
Judge.

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

The United States of America,
Complainants.
vs.
Oberlin M. Carter, *et al.*
Defts. } In Equity, Bill, etc. Rule for Receiver, Order.

The above stated cause came on to be heard on the Rule for appointment of a receiver, and after notice to the defendants shown and no opposition from the defendants, O. M. Carter, I. S. Carter, and L. D. Carter, being now made thereto, it is

Ordered That the receivership of Max H. Whitney, appointed receiver under the similar bill filed by the complainants in the United States Circuit Court for the Northern District of Illinois, be and is hereby extended to the assets in the Southern District of Georgia, which are claimed in com-

plainant's bill as assets into which the funds entrusted to O. M. Carter as disbursing officer have been fraudulently diverted.

The said receiver shall have the usual powers of receivers in such case, and may appoint an agent resident in Georgia, to act for him in the District, and especially in claiming, demanding, receiving and holding subject to the orders of this Court any of the assets aforesaid. Such agent, if appointed, to give bond in the sum of $5000.00 with surety to be approved by the Court, payable to the United States for the benefit of whom it may concern, conditioned for a faithful performance of his duty, such bond to be increased should assets of a convertible character in excess of that amount come into his hands.

December 12, 1901.

EMORY SPEER,
Judge.

No objection,
H. G. STONE.

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

United States of America, *vs.* Oberlin M. Carter, *et al.* } In Equity, Auxiliary Bill, etc. Amendment.

And now comes the United States of America, by Marion Erwin, Special Assistant to the Attorney General, their Solicitor of record, and, with leave of the Court first had and obtained, amends its bill filed in this Court in the above stated cause, by adding to the averments thereof the following:

(A.) Your Orators further aver and charge that on the stock in the Propeller Towboat Company, on the stock in the Savannah Brewing Company, and on the stock in the Savannah Lighterage and Transfer Company, which Companies are defendants to this bill, and which stock was so purchased with the funds of the Government, so intrusted to said O. M. Carter, as disbursing officer of the Government, as aforesaid, and which was so diverted to his own use, as aforesaid, and which stock still stands in his name, there have been numerous dividends declared by said respective Companies, and which dividends are still held by said Companies. That

said dividends, being the proceeds and profits of said trust funds, should, under the orders of this Court, be paid over to the Receiver or his agent, appointed in this cause.

(b) Your Orators further aver and charge, that among the investments so made by the said Oberlin M. Carter with the funds of the Government so intrusted to him as disbursing officer of the Government, as aforesaid, was a loan of $6000.00 made by O. M. Carter in the name of R. F. Westcott, to Thomas Martin, of Beaufort County, S. C., evidenced by a note given by said Thomas Martin in favor of said R. F. Westcott, dated November 8th, 1895, bearing seven per cent. interest per annum, and secured by a mortgage on certain real estate, known as the Spring Island S. C. property.

The particular payments by which said investment was made and traced from said Government funds so diverted, being shown by "Exhibit E. E." hereto attached, which it is prayed may be taken as an amendment to "Exhibit E." to the bill.

Your orators aver and charge that the interest on said note is largely in arrears, and said note is long over due. That the said note and mortgage are now in the possession of Mackall and Anderson, defendants to this suit, who admit that they hold the same as agent for the said O. M. Carter, and who refuse to turn over the same to the Receiver of this Court without an order from said O. M. Carter, or a peremptory order from this Court so to do.

(c)—Your orators further aver and charge that among the investments so made by the said Oberlin M. Carter with the funds of the Government, so inrrusted to him as disbursing officer of the Government, as aforesaid, was the purchase of 100 shares of stock in the "Port of Savannah Company", a company organized to control the property sometimes called "Colleton," and sometimes called "Hunting Island S. C."

The particular payments by which said investment was made and traced from said Government funds so diverted, being shown by "Exhibit E. E." hereto attached, which it is prayed may be taken as an amendment to Exhibit E, to the bill, as aforesaid.

Your orators aver and charge that acting as agents for said O. M. Carter, the said Mackall and Anderson have sold the said stock in said Port of Savannah Company, for the sum of $6500.00 to John K. Garnett, who holds the same subject to

the order and control of the said Mackall and Anderson, agents for the said O. M. Carter, who refuse to turn over or give directions to the said John K. Garnett to turn over the said fund to the Receiver of this Court, without an order from said O. M. Carter, or a peremptory order from Court so to do.

(d.)—Your Orators aver and charge that the Receiver appointed by this Court to hold the properties, in dispute between Orators and said O. M. Carter, through Albert Wylly, Esq., the duly appointed and qualified agent of said Receiver, has made demand upon said several defendants for said dividends and other properties, but so is it that they fail to turn over and deliver the same to him, some alleging one excuse and some another.

Wherefore, your Orators, waiving answer under oath, pray that the said Propeller Towboat Company, the said Savannah Brewing Company, and the said Savannah Lighterage & Transfer Company, be required by the peremptory order of this Court, to pay over respectively to said Receiver's agent, the respective dividends declared and held by them, respectively, on said stocks in said Companies so standing in the name of said O. M. Carter.

Also, that said Mackall & Anderson be required to turn over to said Receiver's agent the aforesaid Thomas Martin note and mortgage.

Also, that said Mackall & Anderson be required forthwith to direct the said John K. Garnett to pay over the said proceeds of the said stock, of the Port of Savannah Company, to said Receiver's agent. And in default of the prompt turning over to said Receiver of said assets, and compliance with the order of the Court in the premises, that the said several defendants failing to comply show cause before this Court at an early day, why they should not be punished for a contempt of Court.

And that the Complainants may have such other and further relief as the nature of their case may require, and to the Court may seem meet and appropriate.

MARION ERWIN
Special Asst. Atty. Gen'l.

Southern District of Georgia, } ss.

Before the undersigned personally comes **Marion Erwin,** who being duly sworn deposes and says that the facts stated in the foregoing amendment are true as he verily believes, and that he knows of the possession of the assets by the defendants referred to, which are sought to be placed in the possession of the Receiver, from the admissions of the parties themselves, in writing or personally made to affiant.

MARION ERWIN

Sworn to and subscribed before me, this 1st day of January, 1902.

R. E. STORRS
Notary Public

Endorsement Amendment to Bill. Filed Jany 2, 1902 H. H. King Clerk.

EXHIBIT E. E.

(Amendment to Exhibit E. to Original Bill.)

Statement of additional description of investments by O. M. Carter, of funds intrusted to him as disbursing officer, diverted to his use, as set forth in original bill of complaint.

Diverted Funds from Division 28 (Exhibit E.)
Investment in Spring Island S. C. Property.

Check "R. F. Westcott, O. M. Carter, Atty.", on Union Trust Co., N. Y., dated Nov. 8, '95, No. 133, favor Wm. Elliott, Atty., ...	$3780.00
Check "R. F. Westcott, O. M. Carter, Atty.", on Union Trust Co., N. Y., dated Nov. 21, '95, No. 137, favor A. Minis,.....	2220.00
	$6000.00

Being loan on note for $6000.00, dated Nov. 8, 1895, of Thomas Martin, of Beaufort County, S. C., in favor of R. F. Westcott, at 7% interest, endorsed by R. F. Westcott, and delivered to O. M. Carter; said note secured by mortgage on real estate of Thomas Martin, known as the Spring Island S. C. property. Interest on said note collected by O. M. Carter, Dec. 8, '96, $424.05, and deposited to his personal credit in Merchants National Bank of Savannah, Ga.

Diverted Funds From Divisions 27, 28, 29, 30, 31. (Exhibit E.) Investment in Colleton or Hunting Island S. C. Property. For proposed "Port of Savannah Co."

June 26, 1895, Check of R. F. Westcott, O. M. Carter, Atty., on Union Trust Co., N. Y., favor W. W. Mackall,.....	$ 144.00
June 28, 1895, Check of R. F. Westcott, O. M. Carter, Atty., on Union Trust Co., N. Y., favor W. W. Mackall, Treas, 1st Assessment Port Sav. Co.,.....	150.00
July 1, 1895, Check of "R. F. Westcott, O .M. Carter, Atty., on Union Trust Co., N. Y., for $5000.00 placed to credit of O. M. Carter in So. Bank State of Ga., and checked out as follows:	
July 5, 1895, 2nd Assessment paid per receipt....	100.00
July 13, 1895, 3rd " " " "	3200.00
Aug. 5, 1895, On " " " "	1200.00
Oct. 26, 1895, Check O. M. Carter, No. 1090, on M. Nat. Bk., Sav. favor W. W. Mackall, Treas., ...	420.00
Feb. 29, 1896, Check No. 28, O. M. Carter on U. T. Co., N. Y., favor W. W. Mackall, Treas., 5th Assess.	250.00
Apr. 17, 1896, Check O. M. Carter on U. T. Co., N. Y., favor W. W. Mackall, Treas.,..	146.66
Apr. 22, 1896, Check O. M. Carter on U. T. Co., N. Y., favor W. W. Mackall, Treas.,..	76.99
May 16, 1896, Check of O. M. Carter on Union Trust Co., N. Y., favor Charlton, Mackall & Anderson, ...	99.28
May 21, 1896, Check of O. M. Carter, Mer. Nat. Bk., Savannah, favor of W. W. Mackall, Treas., ...	40.00
July 8, 1896, Check of O. M. Carter on Mer. Nat. Bank, Savannah, favor W. W. Mackall, Treas., 7 Assess., ...	150.00
	$5976.93

Being investment in 100 shares of "Port of Savannah Co." or "Hunting Island" stock, held for O. M. Carter by Mackall & Anderson, of Savannah, and sold for him by them through John K. Garnett, for $6500., who now holds the same subject to their orders.

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

United States of America, *vs.* Oberlin M. Carter, *et al.* } Bill, etc., Amendment.

Upon consideration of the allegations of the foregoing amendment, it is ordered that the same be and is allowed.

And it appearing to the Court that Albert Wylly, Esq., has been appointed and qualified as agent for the Receiver appointed by this Court, and that an order has been heretofore entered in this cause by consent of the Solicitor for the Complainant and Solicitors for said O. M. Carter, directing said agent to demand, receive and hold said assets in dispute between the Government and said O. M. Carter, It is ordered:

(1.)—That said the said Propeller Towboat Company, the said Savannah Brewing Company, and the said Savannah Lighterage & Transfer Company shall forthwith pay over, respectively, to said Albert Wylly, agent of the Receiver in this cause, the respective dividends declared and held by them respectively, on said stocks in said Companies, so standing in the name of said O. M. Carter.

(2.) That said Mackall & Anderson shall forthwith turn over to said Albert Wylly, agent for the Receiver, the Thomas Martin note and mortgage held by them as agent for said O. M. Carter.

(3.) That said Mackall & Anderson shall forthwith give to said Albert Wylly an order on said John K. Garnett, for the delivery to him of the proceeds of the Port of Savannah Company stock referred to in said amended bill.

(4.) On failure to properly comply with the provisions of this order, the said defendants so failing to comply are required to show cause before undersigned at a session of the said Court to be holden at the Court Room in the City of Macon, on Monday January 6th, 1902, at 10 o'clock a. m., or as soon thereafter as the case can be heard.

January 1, 1902.

EMORY SPEER,
U. S. Judge.

Endorsement on copy of proceedings from Southern District of Georgia. Filed in Clerks Office Circuit Court of United States for Northern District of Illinois Sept 18, 1906 Marshall E Sampsell Clerk.

And on towit: the 18th day of September 1906 came the complainant by Marion Erwin its solicitor, and by agreement of parties filed in the clerks office of said court copies of the Auxiliary Bill previously filed in the Circuit Court of the United States for the Southern District of Illinois together with copies of certain proceedings had thereon in said Circuit Court for the Southern District of Illinois, in the words and figures following towit:

BILL FILED IN SOUTHERN DISTRICT OF ILLINOIS AUG 28, 1901

IN THE CIRCUIT COURT OF THE UNITED STATES

For the Southern District of Illinois

The United States of America	Gen. 8940
vs.	In Equity
Oberlin M. Carter, *et al.*	Bill, &c.

To the Honorable the Judges of the Circuit Court of the United States for Southern District of Illinois

The United States of America brings this its bill of complaint against Oberlin M. Carter, a citizen of the State of Ohio at present residing in the United States Penitentiary at Fort Leavenworth in the State of Kansas, and against Lorenzo D. Carter, a citizen of the State of Illinois residing at Oakland, Coles County, Illinois, and I. Stanton Carter, a citizen of the State of Illinois, residing at Chicago, Illinois.

I.

Carter's Duties, Powers and Discretions.

And thereupon your orators charge, aver, complain and say that from about the year 1888 until the 20th day of July, 1897, continuously, the said Oberlin M. Carter was an officer of the United States Army in the Corps of Engineers, and as such engineer in local charge in the Southern Judicial District of Georgia, of what is usually called the "Savannah District" for the improvement by the United States of rivers and harbors, and as such officer he was engaged in and about the execution of such river and harbor improvements as were

made in said Savannah District during said period; and as such officer in charge of said Savannah District he was vested with sundry powers. duties and discretions during said period and amongst others:

With power, duty and discretion in proposing from time to time to his superiors for adoption, projects for the improvement of the Rivers and Harbors in said Savannah District.

With power, duty and discretion in proposing from time to time to his Superiors for adoption projects for the expenditure of moneys appropriated by Congress for the improvement of the Rivers and Harbors in said Savannah District.

With power, duty and discretion in devising, drafting and proposing from time to time to his Superiors for adoption, specifications for contracts for such River and Harbor improvements proposed to be made in said Savannah District.

With power, duty and discretion in from time to time drafting and proposing to his superiors for adoption, forms of advertisements for giving notice to the public that competitive bids would be received by him for the construction of such proposed River and Harbor works.

With power, duty and discretion in causing to be fixed and fixing the time such advertisements would be published prior to the opening of bids.

With power, duty and discretion in proposing from time to time to his superiors for adoption, and causing to be fixed, and fixing for such contracts to be let, the time designated in the specifications within which the successful bidder would be required to commence work.

With power, duty and discretion in giving out information in regard to such contracts to be let.

With power, duty and discretion in from time to time receiving proposals for and recommending to his superiors the awarding of such contracts.

With power, duty and discretion in approving or rejecting the bonds required to be given by such contractors.

With power, duty and discretion in superintending the work being done by contractors under such contracts in said Savannah District; and in approving and accepting or rejecting material being put in and work done by such contractors in said Savannah District, according as the same was in accordance with the requirements of such contracts or not.

With power, duty and discretion in from time to time approving modifications of such contracts and suggesting to his superiors the adoption of such modifications.

With power, duty and discretion in from time to time approving or rejecting the accounts rendered to him by such contractors for material furnished and work done or claimed by such contractors to have been furnished or done by them under contracts let, according as such accounts should be fair and honest or false and fraudulent.

And with power, duty and discretion when in funds intrusted to him as a disbursing officer, in from time to time paying such contractors or refusing to pay them, the amounts claimed by them to be due them for material furnished and work done under such contracts let, according as such claims were fair and honest or false and fraudulent.

II.

The Scheme Devised to Defraud.

That on or about the year 1891, the said Oberlin M. Carter and one Benjamin D. Greene, one John F. Gaynor, one William T. Gaynor, one Edward H. Gaynor and one Michael A. Connolly (hereinafter for the sake of brevity called the conspirators), devised, concocted and put in operation a certain fraudulent scheme for the purpose of defrauding your orators, the United States of America.

(1) That the said fraudulent scheme contemplated that the said Oblin M. Carter as such engineer officer in charge of said Savannah district should fraudulently exercise the said powers of his office and discretion vested in him as aforesaid in favor of said conspirators and against the interest of the United States, and contrary to his the duty and allegiance due by him to the Government under which he held such high and important trust.

(2) That said fraudulent scheme contemplated that by undue shortness of time in advertising the letting of contracts; that by withholding specifications from proposed bidders not in the conspiracy, as far as such withholding could be made consistent with the concealment of the fraud; that by drafting the specifications, so as to mislead proposed bidders not in the conspiracy as to the character and quantity of material really intended to be used in the work under the

contracts, and by fraudulently and secretly furnishing to his co-conspirators information as to the bids, and as to his future course as engineer officer in charge in the construction of the work under the contracts, the said Oberlin M. Carter would effectually suppress competition in the bidding for such contracts to be let for the United States through said Oberlin M. Carter, for said Savannah District, and that the said conspirators in the name of some one of them, or of some other person or corporation for their benefit, would be the only real bidders for such contract work for construction of jetties, spur-dams and training walls, for the improvement of the rivers and harbors in said Savannah District. That thus all such contracts which would be from time to time let for such work as aforesaid, would be obtained by some one or other of said conspirators or by and in the name of some other person or corporation but secretly for the benefit of said conspirators; to the end that the said river and harbor work in said Savannah District put out to be done on contracts, would be fraudulently let for the benefit of said conspirators at high and exorbitant cost to the United States of America, and at great profit to the said conspirators.

(3) That said fraudulent scheme further contemplated, that said Oberlin M. Carter, as such engineer officer in charge as aforesaid should in drafting the specifications for contracts to be let by competitive bids for what is commonly called mattress work to be used in the construction of jetties, spur-dams and training-walls in the river and harbor improvements in said Savannah District, would introduce into the specifications the novel provision of having two or more designs of mattresses specified, to be bid for by the proposed contractor at one price for either design; the one design to be very much more costly for the contractor to furnish than the other or others, but the engineer in charge to have the option after the contract should be let to call for either design he might choose to have put in the work; with intent that the bid of any person not a party to said fraudulent scheme who should propose to bid on such contract would have to be based upon the most costly design of mattress so specified, as the one most apt to be called for by the engineer, while the said conspirators or the person acting for them, would be informed by the said Oberlin M. Carter before the bidding that only the cheapest design of those specified in the specifications would be called for to be put in the works,

and would thus, even if the other means to suppress competition provided for in the fraudulent scheme should fail, be able to bid a very high price for the contract, based on the cheapest design of mattress, and still underbid oll other bidders and obtain the contract.

(4) That said fraudulent scheme further contemplated, that said Oberlin M. Carter as such engineer, officer in charge as aforesaid, should in drafting the specifications for contracts to be let for jetties, spur-dams and training walls in said Savannah District would specify so vaguely, and so uncertainly set forth the character quality, quantity, description and design of the material to be used in the work, (a) that when the material was furnished by the contractor under such contracts as should be so fraudulently obtained for the benefit of said conspirators as aforesaid, the said specifications could and would be a fraudulent, strained and lax construction to be placed upon the same, by said engineer in charge, be made to apparently justify the acceptance and approval which he would make for payment at such high and exorbitant prices, of large quantities of material of very poor and cheap quality, description and design, and of very small value to the United States, and (b) that when if by chance any person not a party to said fraudulent scheme should happen to be the lowest bidder and obtain any such contract in said Savannah District that by a fraudulent, unfair, rigid and stringent construction to be placed upon the specifications by said engineer in charge, the specifications by said engineer in charge, the specifications could and would be made to apparently justify the rejection which he would make of material furnished by such contractor of very much better quality, quantity, description and design and of a greater value to the United States, with the intent that by such oppressive rejections, the performance of such contract would be made ruinous to the contractor so having dared to compete with said conspirators in bidding for such contract, and thus that further competition with the said conspirators would thereafter be effectually cut off.

(5) That said fraudulent scheme further contemplated that on all work so let on contracts which should be obtained for the benefit of said conspirators as aforesaid, the said Oberlin M. Carter, as Engineer in charge as aforesaid, would so instruct and locate the assistant Engineers and Inspectors under him, intended for inspecting the details of the work

of construction, that there would be little if any inspection of the details necessary to be inspected to ensure the furnishing of honest work and material, and that the said Oberlin M. Carter as such engineer officer in charge would fraudulently accept for the government under such contracts, work done and material furnished known by him to be of inferior quality and quantity and not in accordance with the specifications, to the end that the United States might be defrauded with enhanced profits to the said conspirators.

(6) That said fraudulent scheme further contemplated that the said Oberlin M. Carter as such engineer officer in charge as aforesaid, would fraudulently approve for payment, and when in funds as a disbursing officer, fraudulent pay, accounts which would be rendered to him as such engineer officer in charge as aforesaid, by the said conspirators or by some one of them, or by or in the name of the person or corporation which should by the successful operation of said fraudulent scheme have obtained such contracts for the secret benefit of said conspirators, and which accounts should be rendered as aforesaid, for such inferior material and work to be put into said works as aforesaid, and at the exorbitant and fraudulent prices stated in such contracts so fraudulently to be obtained by said conspirators as aforesaid.

(7) That said fraudulent scheme further contemplated that the said moneys so fraudulently obtained on such contracts by the said conspirators through the said Oberlin M. Carter, as such Engineer officer in charge, and disbursing officer as aforesaid, should be appropriated to the use of the said conspirators and that they should aid each other in the concealment from the officers of the United States not parties to the consipracy, of the moneys from time to time so mis-appropriated and of the investments thereof; to the end that said scheme might be further operated by them and that they might be secure from detection in the enjoyment of such moneys.

(8) That said fraudulent scheme further contemplated that out of the moneys so to be fraudulently appropriated by said conspirators as aforesaid, certain portions the full and exact amount of which is to your orators unknown, should be appropriated by the said William T. Gaynor and Edward H. Gaynor, and smaller sums by the said Michael A. Connolly, and that the net profits of such contracts after pay-

ment of said sums and the cost of the work would be divided between the principal conspirators, Benjamin D. Greene, John F. Gaynor and Oberlin M. Carter.

III.

The Scheme to Defraud Put in Operation.

That pursuant to the scheme to defraud the United States so devised, concocted and agreed upon between the said conspirators, the said Oberlin M. Carter as such engineer officer in charge of said Savannah District, did on or about the first day of January, 1891, commence to put said fraudulent scheme in operation in said Savannah District, and to exercise the said powers and discretions of his office in favor of the said conspirators and against the United States in accordance with said fraudulent scheme, and continued so to do as successive contracts were to be let and were let from time to time by said Oberlin M. Carter as such engineer officer in charge as aforesaid, until on or about July 20th, 1897, when the said Oberlin M. Carter as such engineer officer in charge as aforesaid was relieved from duty and superceded. And each of the conspirators aforesaid, commenced on or about the first day of January, 1891, to do and perform their parts in the accomplishment and carrying out of said fraudulent scheme to defraud the United States and continued so to do as successive contracts were to be let and were let in said Savannah District from time to time, in the suppression of competition in the letting of the contracts, in the obtaining of the contracts in the name of some one of the conspirators or of some other person or corporation for the benefit of said conspirators at high, exorbitant and fraudulent prices, in putting into the construction under the contracts poor, cheap and inferior material and work not in accordance with the specifications of the contracts, in the rendering of accounts against the United States for such poor, cheap and inferior material and work not in accordance with the specifications as aforesaid and at said high, exhorbitant and fraudulent prices fixed in said contracts so fraudulently obtained for the benefit of said conspirators as aforesaid, and in the approval and payment of said accounts by the said Oberlin M. Carter as engineer officer in charge, and in the division of the said moneys so paid between the said conspirators and the concealment thereof, not only until the said Oberlin M. Carter

was relieved from duty as such engineer officer in charge of said Savannah District on or about July 20, 1897, as aforesaid, but thereafter continued and have continued until this date to aid and abet each other in the concealment of the moneys so fraudulently obtained from the United States, through the operation of said scheme and in their endeavor to obtain additional moneys from the United States for work alleged to have been done under such contracts so fraudulently obtained at the exorbitant and fraudulent prices secured in said contracts by the operation of said fraudulent scheme, and for the poor, cheap and inferior material put into said constructions, not in accordance with the specifications.

IV.

Description of the Engineering Work.

That the principal expenditures made by the United States in river and harbor improvements in said Savannah District both under General Q. A. Gilmore, the predecessor of the said Oberlin M. Carter in charge of said district and under the administration of the latter were in the construction of spur-dams and training walls, commonly included under the generic term of "jetties" and being a kind of dam or wall constructed of "logs and brush and stone" or of "brush and stone," so placed as to narrow the channel or so placed in reference to the channel as to effect the flow of the current, and as a result of the increased flow of water to cause an increase in the depth of the channel.

Prior to the formation of the scheme to defraud the United States, formed on about January 1st, 1891, as aforesaid, the brush or logs and brush used in these jetties in the Savannah District were put into the construction principally in three ways:

Fascines. One of the principal materials used in the construction of jetty work was the brush fascine.

These fascines were usually among other things specified to be made of live brush, well trimmed, the butts of the brush to be placed in alternate directions, and the fascine to be closely choked by ties of wire or tarred rope at intervals of every two or three feet, so as to form an artificial log of the diameter of from 9 to 15 inches at the choke, and from 12 to 20 feet in length, according to the specifications for

the particular contract. The form of construction of a fascine being illustrated by Drawing Exhibit A filed herewith.

(1) There were the training-walls and spur-dams built up of fascines, placed in the training-wall or dam by the contractor separately; that is to say, each fascine being put in place one at a time. Prior to the formation of said fraudulent scheme as aforesaid the prevailing contract prices for fascines so put in the works in the District ranged from 89 cents to $1.10 per cubic yard. That is to say the fascines were piled up on top of each other and measured, and the fascine material contained in a square yard of surface, and of the depth of one yard, cost the Government when placed in the work only from 89 cents to $1.10, according to locality.

(2) The Brush Mattress. In the contracts let prior to the formation of the said scheme to defraud, where the contract provided for the construction of training-walls or spur-dams to be built up of fascines, it was provided that the Engineer officer in charge could require the fascines to be placed in the jetty either singly or in mats, and when made into mats and so placed, the mats were paid for by the amount of fascine material composing them, at the contract price of fascines per cubic yard, ranging from 89 cents to $1.10 per cubic yard as aforesaid. These fascine mattresses were usually constructed of a layer of fascines placed side by side, upon a layer of traverse poles spaced at intervals of about 6 feet apart, and upon top of the layer of fascines were placed another layer of poles similarly spaced at intervals, the upper and lower poles being joined by ties of wire or tarred rope, so as to form a flexible mattress.

The form of construction of such a mattress is illustrated by drawing, Exhibit B, filed herewith.

In some of the contracts the fascines rest upon a grillage of poles instead of upon a single layer of poles at the bottom, and also there was a corresponding grillage of poles on top of the fascines. By a grillage of poles is meant a layer of poles spaced a few feet apart crossed by a second layer of poles similarly spaced. The form of construction of such a mattress is illustrated by Exhibit C, filed herewith.

When a mattress is constructed as shown in drawing, Exhibit B, the fascines are said to be placed between a half grillage of poles at the bottom and a half grillage of poles at the top, as there are only half as many poles used in such case, as where there is a full grillage of poles at the bottom and at the top as shown in drawing Exhibit C.

When a mattress was so constructed it was towed to its place, a single mat at a time, and loaded with stone and sunk in its place. The stone used in sinking such mats or in holding down the fascines when put in separately being paid for by the government in addition to the price paid for the fascine material.

The reason that the contractor could afford to put in the fascines in mats as cheaply as when put in separately was that the extra material required in binding poles, was fully compensated for by the less labor and difficulty involved in sinking the larger number of fascines going to make up a mat at one performance.

As a consequence the Government obtained such fascine mattresses as it used in said Savannah District prior to the formation of the conspiracy at prices ranging from 89 cents to $1.10 per cubic yard. Equivalent for a mattress made of fascines 9 inches, or one fourth of a yard in diameter, to 22 1/4 to 27 1/2 cents per square yard of mattress surface, or equivalent for a mattress made of fascines 12 inches in diameter to 29 2/3 to 36 2/3 cents per square yard. Or equivalent for a mattress made of fascines 18 inches in diameter to 44 1/2 to 55 cents per square yard.

(3) The Log Mattress. There was also used in said Savannah District in jetty construction prior to the formation of said scheme to defraud what is commonly called a "log mattress." This is sometimes called, however, a "log and brush mattress" because both logs and brush were used in combination in its construction.

The principal design of this mattress was a raft of logs of the average diameter of 12 inches, placed side by side and fastened together with cross-poles placed as binders 8 feet apart and spiked to the logs, and upon this raft was placed a top layer of live brush, or live brush fascines, from 5 to 6 inches in thickness in the finished work, and secured in place by poles lashed to the binders of the raft, thus making a mattress 18 inches thick, exclusive of the binding poles. The form of construction of such a log mattress is illustrated in Drawing Exhibit D filed herewith.

These log mattresses were always paid for in contracts under General Gilmore and under Carter at a stipulated price by the square yard surface measure, the price averaging about 47 cents per square yard prior to the formation of the conspiracy.

Prior to the formation of said scheme to defraud, whenever specification had been drafted by Gilmore or by Carter in which it was provided that two or more different designs of mattress under the same contract should be bid on by the contractor, it was always provided that separate prices should be bid for furnishing either of the designs the engineer might call for. Or if the contract called for only one price to be bid for two or more designs, it always left it optional with the contractor to furnish that design which he could furnish the most cheaply. So that always the contractor would know precisely the thing upon which he was bidding before the contract was let, and at the time he had to put in his bid in competition with other bidders.

V.

Details of the fraud introduced into and under the contracts.

Your orators further aver and charge that early in 1891 the said Oberlin M. Carter, as engineer officer in charge of said Savannah District, commenced to put in operation said fraudulent scheme in respect to the drafting, and by his recommendation causing to be approved by his official superiors, specifications so drawn as to enable said conspirators to consummate said fraud upon the United States.

(1) That in the drafting of the specifications for contract No. 4572 for Cumberland Sound, advertised March 17, 1891, and let May 4, 1891 to John F. Gaynor, the said Oberlin M. Carter, as such engineer officer in charge, for the purpose of carrying into effect said fraudulent scheme introduced into the specifications upon which proposed bidders would be required to base their bids for the contract, three designs of matters. Two of these designs were for log mattresses 16 inches thick in the finished work, similar to those provided for in the Gilmore contract of October, 1886, No. 3285, for Cumberland Sound, which allowed the contractor to use the design he preferred, but Carter provided in his specifications for a third design of brush mattress made of fascines 9 inches in diameter, and required bids for it by the square yard, instead of by the cubic yard as such mattresses had been therefore been paid for, and he provided in the specifications that the engineer in charge should have the option of substituting the "brush mattress" for the log mattress in the construction of the work.

Having succeeded by use of said fraudulent scheme in suppressing competition and awarding said contract to John F. Gaynor at the rate of 99 cents per square yard for log mtatresses, being double the price of the same theretofore prevailing, and at the rate of 97 cents per square yard for brush mattresses, being nearly four times the price of such mattresses theretofore prevailing in said Savannah District, the said Carter corruptly exercised his option in favor of said contractor and allowed him to put in all brush mattresses at the exorbitant rate of 97 cents per square yard.

(2) By a corrupt use of a similar brush mattress in the specifications in contract No. 4637 of July 20th, 1891, for jetties at Fort Clinch, let nominally to William H. Walsh, but for the benefit of said conspirators, and by providing in the specifications for a bid for mattresses per square yard and fascines per cubic yard, but leaving it optional with the engineer in charge to use either fascines separately or mattresses, and by the use of the said other means provided in said scheme for suppressing competition, the said Oberlin M. Carter succeeded in awarding the said contract as aforesaid at 99 cents per square yard for brush mattresses, equivalent to about $3.56 per cubic yard, while the fascines themselves were awarded in the same contract at only $1.57 per cubic yard when placed in singly and whereas theretofore such mattresses had only cost the Government the price of the fascines in them by the cubic yard. And having so awarded said contract said Carter corruptly exercised his option as Engineer in charge, by allowing said contractor to put into the work 7,744 square yards of mattresses at $3.56 per cubic yard, and only 125 yards of fascines at $1.57 per cubic yard.

(3) In the specifications drafted by said Oberlin M. Carter as such Engineer in charge, for the contract No. 4820 next let to Edward H. Gaynor, September 16, 1892, the said Oberlin M. Carter in pursuance of said fraudulent scheme and corrupt agreement, introduced the following novel features by which it was placed in the power of said Carter, at his will, to shut out all competition with the said conspirators in the bidding for such contrtact work, and which fraudulently secured to said conspirators an increase of four times the price for brush mattresses previously prevailing for same at the same locality.

That is to say: Carter so drafted the specifications for contract 4820, which were adopted on his recommendation,

as to provide for three different designs of mattresses, any one of which might be called for at his option by the engineer in charge, and to be paid for at the same price per square yard for either design furnished by the contractor.

The first design of mattress so provided for corresponded to the log-mattress 18 inches thick, Exhibit D hereinbefore referred to.

The second design of mattress so provided for corresponding to the brush or fascine mattress, Exhibit C, hereinbefore referred to, except it had an additional cross layer of fascines in it, the additional fascines being spaced the same distance apart as the cross poles.

The third design of mattress so provided for corresponding to the brush or fascine mattress 9 inches thick, Exhibit C, and being the same as the second design without addition of the cross fascines.

And while prior to the formation of said fraudulent scheme the prevailing price in said Savannah District of the first design of mattress was double that of the third design, said Oberlin M. Carter joined them in his specifications to be bid on at one price.

And when by means of suppressing competition through said fraudulent scheme said Oberlin M. Carter succeeded in awarding said contract to Edward H. Gaynor for the benefit of said conspirators, at the price of $1.05 per square yard surface measure, equivalent to $4.20 per cubic yard for brush material in the 3d design, or 300 per cent. higher than the prices which had prevailed in the same locality, said Oberlin M. Carter fraudulently exercised the option reserved to him as such engineer in charge under the specifications, in the manner of which the conspirators only were apprised before the bidding, and allowed the conspirators to put in all brush mattresses of the Third and cheapest design, as aforesaid.

(4) In the specifications drafted by said Oberlin M. Carter as such engineer in charge for the contract No. 4960, next let to the Atlantic Contracting Company October 22, 1892, known as the "Big three million dollar contract for Savannah Harbor," the said Oberlin M. Carter, in pursuance of said fraudulent scheme, put in the same three designs of mattresses to be bid on at one price, as in contract No. 4820, and giving the same option to the engineer to select after the letting of the contract any one of the three for use in

the construction, and having succeeded by means of said fraudulent scheme in awarding said contract to the Atlantic Contracting Company for the benefit of said conspirators, at the exorbitant and fraudulent price of 95 cents per square yard of mattress surface, equivalent to $3.80 per cubic yard for brush material in the 3d Design, the said Oberlin M. Carter as such engineer in charge fraudulently exercised the option reserved to him as Engineer in charge and allowed the conspirators to put in all the mattresses of the third and cheapest design.

(5) Your orators aver and charge that not content with the fraudulent addition of about 300 per cent. to the cost of the fascine mattress secured to the contractor in the letting of the contracts as aforesaid, the said Oberlin M. Carter under contracts Nos. 4820 and 4960, commenced about September, 1893, to allow the contractors operating said contracts for the benefit of said conspirators, to supply in lieu of the single mattress provided for in the specifications, and to put into the jetties at one time and at one launching, a construction of from 4 to 8 or more of single mats piled up one on top of the other and forming what is called a multiple mat, in which each single mat constituted a course or layer, but from which a large part of the material required by the designs of brush mattress in the specifications was omitted, and which multiple mat was very much cheaper for the contractor to put in, than the cost of putting in the single mats composing it separately, as the specifications indicated they would be put in and authorized the Engineer to require, and as other proposed bidders had to estimate for in putting in their bids.

And said Carter allowed said contractors not only to put in said material and work not in conformity even to the cheapest design of mattress provided for in the specifications, but of the poorest and cheapest and most inferior material which he could allow passed without detection of the fraud through a fraudulent and strained construction of the specifications. And said Oberlin M. Carter as such Engineer in charge, approved for payment and paid the accounts of said contractors for such work at contract prices for said work so put in.

(6) Your orators further aver and charge that by Act of Congress passed in 1888 and repeated in Act of 1890, Supplement Revised Statutes, page 600, it was provided that

river and harbor contracts shall be made "after sufficient public advertisement for proposals in such manner and form as the Secretary of War may prescribe." That Section 520 of the Army Regulations prescribed by the Secretary of War, prescribed and prescribes that the length of time for advertising for proposals for services by contractors for supplies or services should be 30 days or more or 10 days or less according to the needs of the service; large contracts for purchases or services should be 30 days or more. That Section 519 of the Army Regulations prescribed that:

"Any officer charged with the duty of making a contract or purchase is responsible under the laws and regulations for his action. Permission or orders to make a contract or purchase without competition will not justify the procedure and will not be given."

And your orators aver and charge that while prior to 1890 the contracts in the Savannah District were mostly for comparatively small expenditures, from about $15,000 to $110,000; that after 1890 some of the contracts ran up to several million dollars each, being over $3,000,000 for Savannah Harbor contract No. 4960 for 1892, over $1,000,000 for Savannah Harbor contract No. 6515 for 1896, and over $2,000,000 for the Cumberland Sound contract No. 6517 of 1896. Nevertheless said Oberlin M. Carter as such engineer in charge in pursuance of said scheme to defraud the United States and to suppress competition, did not advertise the letting of any of the contracts let by him from 1891 to 1897 inclusive for 30 days or more, but the advertisements for many of said lettings being run only for 15 to 22 days in the local papers, and for a less time in the Engineering papers in which Government advertisements were required to be published, and the time said advertisements were so run, not being a sufficient public advertisement to enable contractors in different parts of the United States to ascertain the details sufficiently to intelligently put in competitive bids.

(7) Your orators further aver and charge that from 1891 to 1897, inclusive, the said Oberlin M. Carter in pursuance of said fraudulent scheme to defraud the United States, systematically withheld from applicants therefore, as far as he could consistent with the concealment of the fraud, the specifications for contracts advertised by him, and delayed and hindered such applicants in obtaining such specifications to the end that competition with said conspirators in proposals for contracts might be and was suppressed.

(8) Your orators further aver and charge, that by applying said fraudulent scheme to the drafting of the specifications, in the manner hereinbefore described for contracts No. 4572 and 4820, each of the contracts subsequently advertised and let in said Savannah District, and by applying said fraudulent scheme in suppressing competition by shortness of advertising for proposals for contracts and by withholding specifications and delaying applicants in obtaining the same, and by giving secretly to the said conspirators information as to how the said Carter, as engineer in charge, would exercise his discretion in construing specifications purposely by him made ambiguous or uncertain, the said Oberlin M. Carter, as engineer officer in charge, succeeded in awarding at high, exorbitant and fraudulent prices, every jetty contract let by him in said Savannah District from 1891 to 1897, inclusive, to the said conspirators or to some one of them, or to some person or corporation, for their benefit, except one small contract, No. 5359, for Savannah River near Augusta, let to Albert J. Twiggs, July 5, 1893, and as to this one exception the said Carter applied such stringent and unfair construction of the specifications as to make the performance of the contract ruinous to the contractor, and thus prevented him from any further competition with said conspirators. A list and the dates of said contracts so fraudulently let at high, exorbitant and fraudulent prices, about 300 per cent. above the fair value of the same, for the benefit of said conspirators, from 1891 to 1897 inclusive, reference being had to the War Department file number, being as follows:

4,572, May 4, 1891, John F. Gaynor Contractor, Improvement at Cumberland Sound.

4,637, July 20, 1891, W. H. Walsh Contractor, Improvement at Fort Clinch.

4,655, Sep. 9, 1891, John F. Gaynor Contractor, Improvement at Savannah River, Augusta.

4,820, Sep. 16, 1891, E. H. Gaynor Contractor, Improvement at Cumberland Sound.

4,960, Oct. 22, 1892, Atlantic Contracting Co., Contractor, Improvement at Savannah Harbor.

4,963, Oct. 24, 1892, W. H. Walsh Contractor, Improvement at Savannah River, Augusta.

5,127, Dec. 20, 1892, Atlantic Contracting Co., Contractor, Improvement at Darien Harbor.

5,133, Dec. 20, 1892, Atlantic Contracting Co., Contractor, Improvement at Altamaha River.
5,253, Mch. 1, 1893, Atlantic Contracting Co., Contractor, Improvement at Darien Harbor.
5,254, Mch. 20, 1893, Atlantic Contracting Co., Contractor, Improvement at Brunswick Harbor.
5,811, Nov. 15, 1894, Anson M. Bangs Contractor, Improvement at Cumberland Sound.
6,049, Apr. 20, 1895, W. T. Gaynor Contractor, Improvement at Darien Harbor, &c.
6,515, Oct. 8, 1896, Atlantic Contracting Co., Contractor, Improvement at Savannah Harbor.
6,517, Oct. 8, 1896, Atlantic Contracting Co., Contractor, Improvement at Cumberland Sound.

Under each and all of which contracts so fraudulently let the said Oberlin M. Carter as such engineer officer in charge, in pursuance of said scheme to defraud the United States, allowed the said contractors to put in cheap and inferior material not in accordance with the specifications in the contracts, and fraudulently exercised in favor of the contractors the options so fraudulently reserved to him in the specifications as engineer in charge. And under each of which contracts, the said Oberlin M. Carter as such engineer officer in charge in pursuance of said fraudulent scheme approved for payment, and paid whenever in funds as disbursing officer, the accounts of the said contractors for such work at the high, exorbitant and fraudulent prices so provided in said contracts so fraudulently let.

VI.

The Division of the Money.

Your orators further aver and charge that the profits of every one of said contracts so fraudulently let for the benefit of said conspirators as aforesaid, from 1891 to 1897 inclusive were devided from time to time between said conspirators.

(1) That in the division between Benjamin D. Greene, John F. Gaynor and Oberlin M. Carter, of the net profits of the contracts so fraudulently obtained prior to the contract No. 4820 of Sept. 16th, 1892, hereinbefore referred to, your orators are unable to state exactly what share was alloted and apportioned to the said Oberlin M. Carter, but

your orator avers that amounts aggregating $16,000, were traced with reasonable certainty from the profits of said contracts back into the possession of said Oberlin M. Carter, after he had as disbursing officer paid out the same on the contracts. How much more the said Carter may have been apportioned as his share of the profits on said prior contracts is to your orators unknown.

(2) Your orator avers and charges, however, that commencing with the contract No. 4820 of September 16th, 1892, let in the name of Edward H. Gaynor, contractor, that after the payment of the cost of the work and after the payment to the other persons parties to the said fraudulent scheme as aforesaid, the profits amounting to over two million dollars ($2,000,000), of all the aforesaid contracts so fraudulently let as aforesaid, were divided from time to time, between Oberlin M. Carter, Benjamin D. Greene and John F. Gaynor in three equal shares, one of which shares was apportioned to the said Oberlin M. Carter, as his share of the profits arising from the consummation of said scheme to defraud the United States.

(3) That said Oberlin M. Carter, as engineer officer in charge of said Savannah District, usually had funds to his credit as disbursing officer in the Merchants' National Bank of Savannah, Ga., or with the Assistant Treasurer of the United States at New York, intrusted to him by the Government for disbursement to contractors on Government contracts, and when in funds during the operation of said fraudulent scheme in said Savannah District, he usually paid the contractors at the beginning of each month for the amount of the vouchers approved by him for the work of the preceding month, reserving 10 per cent. each month until the last payment on the contract.

That the better to secure his share in the fraudulent profits of the contracts, it was usual for said Oberlin M. Carter as such disbursing officer to issue the checks for the monthly payments to the contractors in two batches. One batch was deposited in the local banks at Savannah and Fernandina and used in defraying the cost of the work, and in payments to E. H. Gaynor and W. T. Gaynor and minor agents of the principal conspirators, and the other batch of checks representing the net profits, would usually be taken by said Oberlin M. Carter in person to the City of New York, and the proceeds of said checks, after said Carter was paid there-

from $75 for an allowance for his trip to New York, would be divided between said Benjamin D. Greene, John F. Gaynor, and Oberlin M. Carter, each getting a third as aforesaid.

That sometimes said Oberlin M. Carter did not go on to New York and carry the disbursing checks there for division, but would send the checks to the said Benjamin D. Greene, or John F. Gaynor who would, at the direction of the said Oberlin M. Carter pay over his third of the fraudulent profits as aforesaid, to Robert F. Westcott, (now deceased, the former father-in-law of said Carter) who would invest it and turn over the investment to said Oberlin M. Carter or otherwise dispose of it for the use and benefit of said Carter as said Carter directed.

(4) That although the work was authorized by act of Congress, the money for payment of the bulk of the work under contracts of Oct. 8, 1896, No. 6515 for Savannah Harbor and No. 6517 for Cumberland Sound, let in the name of the Atlantic Contracting Company, contract, was not available until July 1st, 1897. That by reason of the fact that all the profits of the previous contracts had been divided between the parties to the fraudulent scheme it became necessary that the parties interested should put up the money to carry on the work under these contracts of Oct. 8, 1896 until July 1, 1897, when the appropriation of money by Congress would be available, as the general plan of issuing disbursing checks monthly to carry on the work theretofore pursued could not be resorted to. To meet this necessity on or about the first day of January, 1897, the said persons devising said scheme as aforesaid, communicated each with the other, and agreed among themselves, that the said Benjamin D. Greene, John F. Gaynor and Oberlin M. Carter, would each respectively advance approximately one third of the amount which it might be necessary from time to time to advance to carry on the work under said contracts, until such time as the money appropriated by Congress for for payment of the work under said contracts should become available. And it was then and there further agreed between said conspirators that all of the provisions of said scheme to defraud the United States which had been in operation by and between the said parties in said district from 1891 to that time as aforesaid, should be applied in and to the execution and completion of the work under said contracts

of October 8, 1896, which had been so fraudulently let as aforesaid, and in the obtaining of the money for the fraudulent accounts which should be rendered under said contracts to the said Oberlin M. Carter as such engineer officer in charge as aforesaid, and in the division of the said moneys between the said conspirators, except that the moneys so advanced by said Benjamin D. Greene, John F. Gaynor and Oberlin M. Carter, to carry on the work, should be repaid them before the division of the profits between them as aforesaid. That in pursuance of the said scheme to defraud so modified as aforesaid, the said Benjamin D. Greene, John F. Gaynor and Oberlin M. Carter did from time to time each advance moneys to carry on the work under said contracts of October 8, 1896, until July 1, 1897, when the appropriation by Congress became available.

And the said Oberlin M. Carter as engineer did approve accounts rendered by said conspirators in the name of the Atlantic Contracting Company for large amounts charged for cheap and inferior work not done in accordance with the specifications of the contracts and at the high, exorbitant and fraudulent prices at which said contracts had been so fraudulently let, and did on or about July 6th, 1897, pay upon said accounts so approved by him the sum of $575,-749.90, which said amount less the deductions for moneys so advanced by said Benjamin D. Greene, John F. Gaynor and Oberlin M. Carter for carrying on the work, and for the shares of the lesser conspirators and for advances to further carry on the work was divided in thirds between the said Benjamin D. Greene, John F. Gaynor and Oberlin M. Carter.

And the said conspirators have continued to aid and abet each other to this day in their endeavor to obtain from the United States additional moneys for work alleged to have been done under said contracts of October 8th, 1896, so fraudulently obtained at the exorbitant and fraudulent prices secured in said contracts by the operation of said scheme to defraud, and for the cheap and inferior material and work put into said construction under said contracts not in accordance with the specifications.

VII.

Carter's Investments.

(1) Your orators aver and charge that Oberlin M. Car-

ter started out in his career in the Savannah District, without any income other than that of his salary and commutation as officer in the Corps of Engineer in the United States Army, ranging from $2,208 per annum as Lieutenant in 1890, to $3,269.50 per annum as Captain in 1897. In fact prior to 1891, he had great difficulty in making ends meet financially, and frequently resorted to borrowing money from Benjamin D. Greene, one of the contractors whose work he was then supervising. Following the formation of the scheme to defraud as aforesaid however in 1891, the said Oberlin M. Carter passed from the condition of a borrower to the condition of a capitalist, by the investment of the greater portion of his share of the fraudulent and illegal profits of the contracts so fraudulently let by him as Engineer in charge for the benefit of said conspirators as aforesaid.

These investments were secretly made by the said Oberlin M. Carter in stocks, bonds, loans and real estate, the particulars of which investments were not known to your orators until within the past year, because of the means taken by the said Oberlin M. Carter to conceal the same.

(2) As before stated it is not known in what proportion said Carter shared in the illegal profits of the 1891 contracts so fraudulently let by him further than that $16,000 is traced from that source into deposits made by him from Dec. 1891, to Nov. 7th, 1892, and from which investments were made by him in stocks and bonds to the amount of $13,438.75.

After that, however, commencing with the division of the profits under contract No. 4820, of September 16th, 1892, the division was made of the net profits, as hereinbefore set forth, between Benjamin D. Greene, John F. Gaynor, and Oberlin M. Carter, by thirds each. The following table gives in one column a statement of the dates when said divisions of the profits of said fraudulent contracts were so made, by thirds as aforesaid, and in the next column gives said Carter's share of the profits at said respective dates, and is obtained by adding to the previous shares so obtained by said Carter his share obtained at the respective date, so as to show his accummulated profits, or the aggregate of his profits at said respective dates. And in the next column gives the aggregate of said Carter's investments from said fraudulent divisions from the beginning, held by him on said respective dates.

Statement of the Aggregate of Thirds of Divisions and of the Aggregate of Investments held by Carter at Corresponding Dates.

Number and dates of Division		Aggregate of Thirds Exclusive of $1,575, Arbitrary allowance Carter's Trips to New York.	Aggregate of Investments at Cost.
Number	Date		
	1893		
2	Jan. 3	12,900.04	14,320.00
3	Feb. 10	28,900.04	23,670.00
4	Mch. 13	44,900.04	46,526.25
5	Apl. 14	65,618.15	66,282.50
6	May 8	80,618.15	66,391.25
7	June 5	93,118.15	79,053.75
8	July 11	129,118.15	127,816.25
9	Aug. 7	142,118.15	127,816.25
10	Sept. 6	166,418.15	140,641.25
11	Oct. 10	178,418.15	163,591.25
12	Nov. 6	184,418.15	175,947.50
13	Dec. 4	205,418.15	182,128.75
	1894		
14	Jan. 8	221,918.15	193,766.25
15	Feb. 5	239,918.15	214,337.50
16	Mch. 5	247,918.15	233,033.75
17	July 9	277,536.02	241,237.50
18	Sept. 10	419,586.02	241,237.50
19	Oct. 5	440,586.02	294,142.50
20	Nov. 12	450,586.02	341,919.50
21	Dec. 11	458,865.93	431,453.75
	1895		
22	Jan. 17	468,507.59	441,453.75
23	Feb. 4	478,507.59	441,453.75
24	Mch. 5	485,578.47	441,453.75
25	Apl. 8	508,886.80	453,153.75
26	May 22	517,981.82	466,760.00
27	June 7	536,725.63	463,690.00
28	July 5	582,256.32	493,798.75
29	Aug. 5	589,666.31	493,798.75
30	Sept. 3	589,802.91	493,798.75
	1906		
31	May 12	595,836.35	561,471.50
	1897		
32	July 6	722,528.02	690,301.85
			Aug. 6, 1897

Your orators further aver and charge that the particular description of all said investments of the said Oberlin M. Carter's share of said divisions of the illegal and fraudulent profits of said contracts, and the details of the manner in which said Carter's share of each division is traced into the particular investments, are so voluminous that for convenience of pleading your Orator has filed herewith as Exhibit E to this bill an outline of the same as a bill of particulars, to which the usual leave of reference is prayed as often as may be desired.

(3) Your orators further aver and charge the investments made by said Oberlin M. Carter of the funds intrusted to him as a disbursing officer and which were so returned to him by the said conspirators as his share of the fraudulent fruits of the contracts so fraudulently let by him were invested from time to time by said Carter to a large extent in investments which made to him good returns in income.

The following table gives a statement at different dates of said Carter's income from this source as far as ascertainable and from his salary and commutation as an officer in the United States Army compared with his personal expenditures (not investments) as far as ascertainable at corresponding periods:

Comparison of Carter's income and expenditures:

1890	Gross expenditures	$ 4306,60
"	Gross income from salary and securities	2208.
1891	Gross expenditures	5897.83
"	Gross income from salary and securities	2836.91
1892	Gross expenditures	8354.24
"	Gross income from salary and securities	3269.50
1893	Gross expenditures	14982.74
"	Gross income from salary and securities	8882.
1894	Gross expenditures	14410.88
"	Gross income from salary and securities	16155.50
1895	Gross expenditures	20113.92
"	Gross income from salary and securities	23390.50
1896	Gross expenditures	28611.67
"	Gross income from salary and securities	28501.05

From which it will be seen that said Carter spent but a very little more (comparatively speaking) than the income from his share of the trust funds so fraudulently divided between the contractors and himself.

The 8th Avenue Property.

(4) Your orators further aver and charge, that among the investments so made by the said Oberlin M. Carter, from said fund so intrusted to him as such disbursing officer and so diverted to his own use through said fraudulent scheme as aforesaid, as traced in Exhibit E aforesaid, was the purchase for $39,763.75 by the said Oberlin M. Carter through Robert F. Westcott of certain property on 8th avenue in the Borough of Manhattan, City of New York, and which was conveyed to the said Oberlin M. Carter by Robert F. Westcott and wife, by deed dated January 7th, 1895, recorded on the records of the Register of said City and County of New York, in Liber 49, p. 456, for Section 3, and which is more particularly described as follows: "All that certain lot or parcel of land known and distinguished on a map of certain property of Henry Eckford, made by Daniel Ewen, City Surveyor, in September, 1829, on file in the office of the Register of the City and County of New York, by lot number 298, bounded and described as follows:

"Beginning at a point on the easterly side of 8th avenue in the Borough of Manhattan, City of New York, at the centre line of the block between 24th and 25th streets, running thence easterly and parallel with 24th street 100 feet, thence southerly and parallel with 8th avenue 24 feet 8 1-4 inches thence westerly and parallel with 24th street, 100 feet to the easterly side of 8th avenue and thence northerly along the easterly side of 8th avenue 24 feet 8 1-4 inches to the point or place of beginning, being premises known by the street number 286 Eighth avenue."

Your orators aver and charge that by reason of the fact that the said 8th avenue property was so purchased by the said Oberlin M. Carter, with the fund so intrusted to him as a disbursing officer as aforesaid, and so fraudulently diverted to his own use as aforesaid, the said Oberlin M. Carter took the title to the property under the implied trust to account to your orators for the same and to turn over, deliver and convey the same to your orators upon demand.

The Beirne Gordon Notes.

(5) Your orators further aver and charge that among the investments so made by the said Oberlin M. Carter, from said fund so intrusted to him as such disbursing officer and so diverted to his own use through said fraudulent scheme as aforesaid as traced in Exhibit E, as aforesaid, was a loan of $10,000 made by the said Oberlin M. Carter to Beirne Gordon of Savannah, Ga., made party defendant hereto, evidenced by a note of the said Bierne Gordon, dated November 4th, 1896, and due 5 years and 57 days after date thereof, and for said Carter's convenience Westcott having no interest therein, made payable to R. F. Westcott, for the principal sum of $10,000, and by similar interest notes for $300 each except the first one which was for $93.70, for the interest installments thereon falling due semi-annually, and which said principal note was thereafter endorsed by the said Westcott "without recourse" and delivered up to the said O. M. Carter, so endorsed. And which said principal note so endorsed was in the possession of L. Laflin Kellog, one of the attorneys of said conspirators as late as the month of October, 1900, and by him produced in Court on October 3d. 1900, on the preliminary hearing had before Commissioner Shields in New York for removal of said Benjamin D. Greene, et al. to Georgia for trial on the charge of conspiracy to defraud the United States as hereinafter more fully set forth.

That said loan so made by the said Oberlin M. Carter to the said Beirne Gordon as aforesaid, was secured, among other things, by a Life Insurance Policy, No. 219282, known as an Endowment policy of the Mutual Life Insurance Company of New York, for the sum of $5,000, which policy was delivered to the said Carter as such security, and said Carter, as your orators are informed, retained the possession of the same himself.

That by reason of the fact that the said loan was so made by the said Oberlin M. Carter with the fund so intrusted to him as a disbursing officer as aforesaid, and so fraudulently diverted to his own use, as aforesaid, the said R. F. Wetscott, to whom said notes were payable, and Oberlin M. Carter, to whom said notes were assigned without recourse, took title to the said notes and to the said insurance policy under the implied trust to account to your Orators for the same, and to deliver the same, or the proceeds thereof, to

your orators upon demand. Your orators aver and charge, on information and belief, that said insurance policy has matured, and that the said Mutual Life Insurance Company of New York who holds the surrender-value of said policy of insurance, merely as a stakeholder, is about to pay over the same with the consent of the said Beirne Gordon to the holder of the said $10,000 note of the said Beirne Gordon, for the said Oberlin M. Carter, and will do so unless forthwith restrained by the summary orders and process of this honorable Court, and if allowed to be done, it will result in great loss and injury to your Orators.

Your Orators further aver and charge on information and belief that the said Beirne Gordon is willing and anxious to pay over to the proper party entitled, the entire balance due by him for the $10,000 loan made to him by the said O. M. Carter as aforesaid, when the proper person shall have been ascertained and decreed by a Court of competent jurisdiction, to afford him protection by its decree, and that he stands ready and willing as a stakeholder to stand to and abide such decree.

Orange, New Jersey Property.

(6) Your Orators further aver and charge that, among the investments so made by the said Oberlin M. Carter, from said funds so intrusted to him as such disbursing officer, and so diverted to his own use through said fraudulent scheme aforesaid traced in Exhibit E aforesaid, was the purchase by the said Oberlin M. Carter, at the cost of $63,020.35 for land and improvements, through said Robert F. Westcott, of a half interest in certain real estate situate in Orange, Essex County, New Jersey, the half undivided interest in said land having been conveyed to said Oberlin M. Carter by deed made to him on January 25th, 1897, by Robert F. Westcott and wife, recorded in the office of the Register of Deeds for the County of Essex, New Jersey, in Book "S 30," page 550, and which said real estate and improvements were afterward divided and Carter's interest therein was conveyed to him in severalty by a partition deed made by the said Robert F. Westcott to the said Oberlin M. Carter, dated June 9th, 1899, and which said property so conveyed to said Oberlin M. Carter in severalty as aforesaid, being more particularly described as follows:

"Those two certain parcels or tracts of land situate in the

city of Orange, County of Essex and State of New Jersey described as follows:

Parcel No. 1. Beginning at the intersection of the southerly side of Highland avenue with the easterly side of Berkeley avenue, and running thence in an easterly direction along the line of Highland avenue 109 feet more or less, thence in a southerly direction 225 feet more or less to a point 75 feet east of the easterly line of Berkeley avenue, thence in a westerly direction 75 feet more or less to the easterly side of Berkely avenue, thence in a Northerly direction along the east erly side of Berkeley avenue 225 feet more or less to the point or place of beginning.

Parcel 2. Beginning at a point on the southerly side of Highland avenue distant 349 feet, more or less, easterly from the intersection of the southerly side of Highland avenue with the easterly side of Berkeley avenue, and running thence easterly along the southerly side of Highland avenue 247 feet more or less to land now or formerly belonging to J. H. Noyes, thence in a southerly direction along said land of said Noyes 225 feet more or less to land now or formerly belonging to Zadie W. W. Grant, thence in a westerly direction along the land of said Grant 247 feet more or less to a point 315 feet more or less from the easterly side of Highland avenue, thence in a northerly direction 225 feet more or less to the point or place of beginning."

Your orators further aver and charge that by reason of the fact that the said above described property was so purchased and paid for by the said Oberlin M. Carter, with the funds so intrusted to him as a disbursing officer as aforesaid, and so fraudulently diverted to his own use as aforesaid, the said Oberlin M. Carter took the title to the property under the implied trust to account to your orators for the same and to turn over, deliver and convey the same to your orators upon demand.

Other Investments.

(7) Your orators further aver and charge that among the other investments so made by the said Oberlin M. Carter from said fund so intrusted to him as such disbursing officer and so diverted to his own use through said fraudulent scheme as aforesaid as traced in Exhibit E as aforesaid, were large amounts of stocks, bonds and notes, the description of which is set forth in said Exhibit E, a large part of which is out of

the territorial jurisdiction of this Court or otherwise concealed or converted into other property by those holding the same for the benefit of said Oberlin M. Carter, and all of which is held by those holding the same with notice of the fraud under the implied trust to account to your orators for the same or for the proceeds thereof, and to turn over, deliver and convey the same to your orators upon demand.

(8) Your orators further aver and charge on information and belief, that among the investments so made by the said Oberlin M. Carter from said fund so intrusted to him as such disbursing officer and so diverted to his own use through said fraudulent scheme so traced in Exhibit E, as aforesaid, were large amounts of stocks and bonds and notes which either specifically or through the proceeds of the sale of the same the said Oberlin M. Carter about the time of the confirmation of his sentence by the President as hereinafter mentioned, and shortly thereafter caused to be delivered to his brother, the said I. Stanton Carter, and to his uncle the said Lorenzo D. Carter, for concealment and safe keeping for the benefit of the said Oberlin M. Carter. And that the said I. Stanton Carter and Lorenzo D. Carter thereupon agreed with the said Oberlin M. Carter to co-operate with him and together, in the holding and concealment from your orators of the said securities and proceeds thereof. That in pursuance of said agreement, the said I. Stanton Carter and the said Lorenzo D. Carter, from time to time, secretly brought from New York and elsewhere into the State of Illinois, the investments and proceeds thereof aforesaid and the rents of the property on 8th Avenue, New York City, and in Orange, New Jersey, aforesaid, and that I. Stanton Carter and Lorenzo D. Carter now hold the said securities or the proceeds thereof, and the rents so collected for the benefit of the said Oberlin M. Carter, but with full notice of your orators rights and equities therein, and with the duty imposed upon them by law to account to your orators for the same as a trust fund.

$23,000. Raised by Mortgage on 8th Avenue Property.

(9) Your orators further charge on information and belief that on or about October 8th, 1900, the said I. Stanton Carter, under the power of attorney from said Oberlin M. Carter herein-after mentioned, received from the American Mortgage Company of New York, the sum of $23,000, as a loan to the said Oberlin M. Carter, secured on said property

on 8th Avenue New York City, and now holds the same, or the investment thereof concealed from your orators. That while said loan was made under circumstances as set forth in paragraph VIII subdivision (5) of this bill, which put the said American Mortgage Company upon notice of your orators rights on the said properties, yet your orators are informed that the said American Mortgage Company will content that they are protected in making the loan by a State Statute of New York protecting purchasers and mortgagees of the legal title where a record of lis pendens is not filed in the office provided by that enactment. That said matter is now pending for adjustication in the principal suit filed in the Circuit Court of the United States for the Southern District of New York, by your orators against the defendants named in this bill and against the said American Mortgage Company, to which suit this bill is auxiliary.

That in equity and good conscience it is the right and duty of your orators to have held up and to preserve through the process of this Court, the said sum of $23,000, so held and concealed by the said I. Stanton Carter and to have the same or the part thereof, if any, recovered applied by the decree of this Court, to your orator's claim against Oberlin M. Carter, and in any event should the mortgages aforesaid be decreed in the suit pending as aforesaid to have taken said mortgage free from the rights of your orators, to have the same applied to your orator's claim by decree of this Court.

Rents Collected by I. S. Carter.

(10) Your orators further aver and charge on information and belief, that acting under the power of attorney from Oberlin M. Carter, as set forth in paragraph IX of this bill, the said I. Stanton Carter also collected some $3,000, or other large sum, as net rents or profits of the property on 8th Avenue, New York, and in Orange, New Jersey, before mentioned.

Coupons Collected by I. S. Carter.

(11) That on or about June 27th, 1901, the said I. Stanton Carter collected through the firm of N. W. Harris and Company, at Chicago, Illinois, coupons matured upon the following described securities, constituting part of the investments made with said trust funds, by said Oberlin M. Carter, as

shown on Exhibit E, so received and held by him for account of the said Oberlin M. Carter, to-wit:

July, 1900, coupons on 5 Joliet & No. Indiana R. R. Bonds, Nos. 318 to 322, at $35.	$175.00
Aug. 1900, Coupons on 10 N. Y. Lackawanna & Western R. R. Bonds, Nos. 1171 to 1180, at $25	$250.00
Sept. 1900, Coupons on 15 Delaware & Hudson R. R. Bonds Nos. 82, 83, 121 to 125, 293, 528, 593, 840, to 842, 1648 to 1649, at $35.	$525.00
	$950.00

which collection, or a large part thereof, your orators aver and charge now stands to the credit of the said I. Stanton Carter upon the books of the said N. W. Harris & Co., who are made parties defendant hereto, in order that the said sum may be held up pending this proceeding, and that they may be bound by the final decree of this Court herein.

Rents Collected by L. D. Carter.

(12) Your orators further aver and charge on information and belief that the said Lorenzo D. Carter, in pursuance of the agreement made between him and Oberlin M. Carter and I. Stanton Carter, aforesaid, collected some $2200, or other lareg sum, as net rents and profits of the property in 8th Avenue, New York, and in Orange, New Jersey, before mentioned.

L. D. Carter Sells Securities.

(13) That among the securities constituting a part of the investments into which the said trust funds had been so diverted by the said Oberlin M. Carter, as engineer officer and disbursing officer, as set forth in Exhibit E, the said Lorenzo D. Carter, in pursuance of the agreement between him and the said Oberlin M. Carter and I. Stanton Carter, received and sold, thus converting into money, the following securities sold as follows through J. F. Harris, Broker Chicago.

Sept. 12, 1900, 10 M. N. Y. Lackawanna & Western Construction Mortgage 5% Bonds, Nos. 1171 to 1180, Net proceeds deposited by said L. D. Carter to his credit in the Oakland, (Ill) National Bank, $11,883.54

Through 2nd National Bank, Charleston, Illinois.

Oct. 11, 1900, 2 M. Milwaukee Lake Shore & Westest 6% Bonds Nos. 697 and 847, proceeds 2,649.60

Oct 17, 1900, 2 M. Milwaukee Lake Shore & Western 6% Bonds Nos. 698-699, Proceeds. 2,650.00

Through Oakland (Ill) National Bank.

Oct. 15 and 22, 1900, 4 M. Milwaukee, Lake Shore & Western 6% Bonds, Nos. 839, 843, 844, 846, Proceeds. 5,315.00

Through 1st National Bank, Charleston, Illinois.

Oct. 19, 1900, 2 M. Milwaukee Lake Shore & Western 6% Bonds, Nos. 845 and 846, Proceeds, 2,654.00

L. D. Carter Invests in Other Securities.

(14) That from the proceeds of said moneys in his hands, being managed for said Oberlin M. Carter, as aforesaid, the said Lorenzo D. Carter, on or about Feb. 13, 1901, purchased through the said N. W. Harris & Co., Chicago, securities as follows:

21 M, Bonds 4%, Kentucky Central Ry. Co. Nos. 3376, 3782 to 3798, 5960 to 5961, 5964 Cost, $20,884.35

which bonds and the profits and income thereof the said L. D. Carter holds under the implied trust to account to your orators for the same and to turn over and deliver the same to your orators upon demand.

I. S. Carter Invests in Other Securities.

(15) That from the proceeds of said moneys in his hands, being managed for said Oberlin M. Carter, as aforesaid, the said I. Stanton Carter, on or about March 11, 1901, purchased through said N. W. Harris & Co., at Chicago, Illinois, bonds, as follows:

1 M. Bond 5%, Michigan Telephone Co. No. 2472, Cost	$1010.00
1 M Bond 4%, Kentucky Central Ry Co. No. 5119,	990.00
Interest advance	17.01
	017.01

which bonds and the profits and income thereof said I. Stanton Carter holds under the implied trust to account to your orators for the same and to turn over and deliver the same to your orators upon demand.

VIII.

The Board of Inquiry.

(1) Your orators further aver and charge that it having been determined by the new Chief of Engineers, General John M. Wilson, who succeeded to that office about February, 1897, to make a general change of the officers in the Corps of Engineers from one district to another for the general good of the service, and that fact becoming known to the said Oberlin M. Carter he succeeded in causing himself to be appointed as Military Attaché to the Court of St. James, and also as a member of the Nicaragua Canal Commission, and the said O. M. Carter being superseded as engineer officer in charge of the Savannah District only July 17, 1897, his successor, Captain Cassius E. Gillette, took charge of the district July 20th, 1897.

Within two weeks after taking charge of the Savannah District facts began to come to the attention of Captain Gillette showing irregularities in the administration by said Carter of the affairs of the district of the gravest character.

It was developed that a large number of the official files and documents of the office had been with a great deal of his private papers packed up by Carter in a file case, which he caused to be boxed and which he directed to be shipped to him. This box was detained.

This state of affairs led to the appointment by the president of a board of inquiry, of which Colonel George L. Gillespie (now General Gillespie) was president.

In the meantime the said Oberlin M. Carter hurried back from England. Arriving in New York City early in September, 1897, said Carter expected to be arrested, and took

out of his safety deposit box securities of the cost value of $414,437.50 which he had there, constituting a part of the investments described in Exhibit E, which he had made from his share of the illegal profits of the contracts as aforesaid, and turned them over to the said Benjamin D. Greene and John F. Gaynor at the Hoffman House for safe keeping.

These securities were in a day or two delivered by said Benjamin D. Greene, to the said Robert F. Westcott for safe keeping for said Carter and Westcott placed them in his safety deposit vault. Shortly thereafter the facts in regard to Carter's guilty connection with said Benjamin D. Greene and John F. Gaynor in the contracts began to be given publicity in the newspapers and the said Robert F. Westcott, upon the advice of his counsel and in the presence of his counsel, delivered back to Carter all of the aforesaid securities so turned over to Westcott by said Greene, and took said Carter's receipts for the same in detail, which receipts are dated respectively October 11, 1897, and October 29, 1897, and which original receipts came to the knowledge and into the possession of your orators on or about the month of July, 1900, and are held subject to the inspection of the Court.

Your orator further avers and charges that said Board of Inquiry appointed to inquire into the propriety of Court-Martial proceedings met in Savannah on September 21, 1897, and the said detained file case was opened by the said Oberlin M. Carter in the presence of said Board, and in it were found a large mass of incriminatory evidence tending to show conspiracy between the said Benjamin D. Greene, John F. Gaynor and Oberlin M. Carter in such contract work, aforesaid in Savannah District, and showing that said Carter's personal expenditures had run up from about $4,300 per annum in 1890 to $28,611.67 in 1896, as hereinbefore set forth, and showing that the income so spent by said Carter was derived from a large amount of securities which Carter was handling during said period. And said Carter in order to explain his possession of said securities, and his spending of the income from the same, caused the said Benjamin D. Greene and said John F. Gaynor to come before said Board and make statements in his presence to the effect that neither the said Oberlin M. Carter nor the said Robert F. Westcott had been in any way beneficially interested in any of said contracts let in said Savannah District, and the said Carter himself made

before the said Board a like statement, and further stated that the large income so spent by said Carter from securities was from gifts given him by the said Robert F. Westcott, his former father-in-law, from the private fortune of said Westcott, to whom the securities belonged and in which Carter had no interest. Your orators further aver and charge that after due investigation said Board of Inquiry recommended the convening of a Court Martial to try said Oberlin M. Carter on the charge, among other things, of conspiracy with the said Benjamin D. Greene, John F. Gaynor and others to defraud the United States as hereinbefore set forth, although at that time the details by which the said conspiracy was carried out and the money divided between the conspirators as hereinbefore set forth was not fully known.

The Court Martial.

(2) Your orators further aver and charge that in due course a Court Martial was duly constituted and convened at Savannah on the 12th day of January, 1898, of which General Elwell S. Otis was president, and the other members being all distinguished engineers or officers distinguished in other branches of the military profession. The trial of Captain Carter before this Court Martial on the charges was continued through three months and attracted more attention and was given great publicity through the newspapers and otherwise than any other similar event in the history of the country, and the details of the evidence published every day in almost every important newspaper throughout the United States gave a notoriety to the facts in issue in the case such as probably no similar case has ever had.

Before this Court Martial the said Carter and the said Benjamin D. Greene were volunteer witnesses in behalf of said Carter, and again stated that neither said Robert F. Westcott nor the said Carter had been interested beneficially in said contracts, and that the said securities handled by said Carter were the securities belonging to the private fortune of the said Robert F. Westcott, which said Carter had no personal interest, but the income from which had been given him by said Westcott. Your orators further aver on information that the said Oberlin M. Carter endeavored to induce the said Robert F. Westcott to appear before said Court Martial and testify falsely to the same effect, but

the latter while he did not desire to testify against the husband of his dead child, would not consent to go upon the stand otherwise than to tell the truth of the transaction, and to disclaim any interest in these securities and investments. To avoid testifying against his said son-in-law, said Robert F. Westcott departed to Europe and remained away during the Court Martial proceedings.

The said Oberlin M. Carter however induced his brother-in-law Robert E. Westcott to voluntarily appear before said Court Martial and to testify in his behalf as to said Robert F. Westcott having given "money" to said Oberlin M. Carter, to create the impression that the income so spent by said Oberlin M. Carter had been gifts from his father-in-law, although the said Robert F. Westcott had told the said Robert E. Westcott that this was not true.

The said Oberlin M. Carter also induced his own brother I. Stanton Carter, defendant to this bill, who had been an inspector under said Oberlin M. Carter on the said contract work in Savannah District, and who was familiar with the fraudulent character of the work done, to testify in his behalf before the said Court Martial as to seeing Robert F. Westcott hand over money to said Oberlin M. Carter. And the said I. Stanton Carter was present at said court martial during said trial and was fully apprised of the fact that said Oberlin M. Carter then fully disclaimed any interest in said securities and investments other than in the income spent, which he claimed as having been given him by the said Robert F. Westcott.

Your orators further aver and charge that, by reason of the fact that the said Court Martial had no power to compel civilian witnesses to testify, and no power to compel such witnesses to produce books and papers, the evidence before said Court Martial did not develop the divisions of the money paid on said contracts, between the conspirators nor trace and locate the specific funds so divided into specific securities, as has since been done and set forth in this bill. Nevertheless the evidence of conspiracy to defraud the United States, entered into between the said conspirators in the letting of the contracts and in the doing of the work under them, and the possession by Carter of so large an amount of securities from which he was enjoying the income without any satisfactory explanation furnished proof so plain of the guilt of said Oberlin M. Carter that he was convicted by said

Court Martial, and sentenced to dismissal from the army, to pay a fine of $5,000 and to be imprisoned at hard labor for five years.

The Appeal.

(3) Your orators further aver and charge, that an appeal was made by said Oberlin M. Carter to the President of the United States to review the judgment of the said Court Martial. That on account of the presence of public business consequent upon the pendency of the war with Spain, there was some delay in the disposition of said appeal, and the Attorney-General to whom a review of the evidence was referred by the President, did not reach a conclusion confirming said judgment until about the 29th dav of September, 1899, and this was followed by a confirmation of the judgment by the President, following which the said Oberlin M. Carter was placed in confinement, and after some preliminary efforts made by him to obtain release by habeas corpus proceedings he was imprisoned in said Penitentiary at Fort Leavenworth, Kansas.

The Indictment of Greene and the Gaynors, et al.

During the pendency of said appeal such original documents and evidence throwing light upon the frauds committed as aforesaid were in the possession of the President or the Attorney-General for him. As soon as the said appeal was disposed of, the said evidence was turned over to the District Attorney for the Southern District of Georgia, who forthwith proceeded to put said evidence before the Grand Jury for said District, and on the 8th day of December, 1899, said Grand Jury returned a true bill of indictment against the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connolly and Oberlin M. Carter, charging them with conspiracy to defraud the United States by and through said scheme to defraud as substantially set forth in this bill.

The Hearing for Removal.

(4) The said Benjamin D. Greene, John F. Gaynor, William T. Gaynor and Edward H. Gaynor were arrested in New York City on December 11th, 1899, on warrants issued by John